TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 250. 36.

THE WABASH RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

PETER TOURVILLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED APRIL 4, 1889.

(17,350.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the October term, 1898, thereof, between Peter Tourville, respondent, and Wabash Railroad Company, appellant, a manifest error hath happened, to the great damage of the said Wabash Railroad Company, appellant as aforesaid, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from and after the — citation in this cause bears date, in the said Supreme Court of the United States, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the United States Circuit Court for the Western District of Missouri, Central Division.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, central division, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by—
JAS. B. GANTT,
Chief Justice, Supreme Court of Missouri.

[Endorsed:] No. 7985 United States circuit court, western district of Missouri, central division. Peter Tourville, resp., *vs.* Wabash Railroad Co., app'l't. Writ of error to the supreme court of the State of Missouri. Returned and filed 14th day of March, 1899. Jno. R. Green, clerk.

Return to Writ.

UNITED STATES OF AMERICA, *State of Missouri,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified

transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Seal of the Supreme Court of Missouri.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 20th day of March, A. D. 1899.

JNO. R. GREEN, *Clerk.*

2 The United States of America to Peter Tourville, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the central division of the western district of Missouri, wherein Wabash Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. Gantt, chief justice of the supreme court of the State of Missouri, this 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

JAS. B. GANTT,
Chief Justice.

[Endorsed:] Supreme court of Missouri. Peter Tourville, d'f't in error, *vs.* Wabash Railroad Co., pl'ff in error. Citation. Filed March 14th, 1899. Jno. R. Green, clerk.

UNITED STATES OF AMERICA,
Central Division of the Western District of Missouri, } *ss:*

I hereby acknowledge due service of the within citation this 15th day of March, A. D. 1899.

VIRGIL RULE,
Attorney for Defendant in Error.

3 STATE OF MISSOURI, *sct:*

In the Supreme Court of Missouri.

Be it remembered that heretofore, to wit, on the 1st day of January, 1896, there was filed in the office of the clerk of the supreme court of the State of Missouri a certified copy of the judgment and order granting an appeal in the case of Peter Tourville, respondent, against The Wabash Railroad Company, appellant, from the circuit court of the city of St. Louis; which said certified copy is in words and figures as follows, to wit:

STATE OF MISSOURI,
City of St. Louis, } *ss:*

Be it remembered that at the April term, A. D. 1895, of the circuit court, city of St. Louis, within and for the city and State afore-

said, and on the third day of May, A. D. 1895, it being the 23rd day of the said April term, 1895, of the said court, the following proceedings were had in a certain cause then pending in said court, wherein Peter Tourville is plaintiff and The Wabash Railroad Company is defendant, to wit:

FRIDAY, *May 3rd*, 1895.

PETER TOURVILLE
vs.
WABASH RAILROAD CO. } (85743.)

Now, at this day, come said parties, by their respective attorneys; thereupon plaintiff presents to the court the mandate of the St. Louis court of appeals, and moves for judgment in accordance with the same, which is by the court sustained.

It is therefore considered and adjudged by the court that plaintiff have and recover of defendant and W. Nichols and J. H. Maxon, the securities on the appeal bond herein, the sum of eighty-one dollars and his costs and charges in this behalf expended, and have therefor execution.

4 And afterwards, at the December term, 1895, of the said court, the following further proceedings were had in said cause, to wit:

SATURDAY, *December 7th*, 1895.

PETER TOURVILLE
vs.
WABASH RAILROAD CO. } (85743.)

Now, at this day, comes defendant, by attorney, and files an affidavit for appeal, and on its motion an appeal is allowed it to the supreme court of the State of Missouri from the judgment herein, and thirty days' time is given it to file a bill of exceptions herein.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, Thomas B. Rodgers, clerk of the circuit court, city of St. Louis, within and for the city and State aforesaid, do hereby certify that the above and foregoing contains a true, full, and complete transcript of the judgment in the above-entitled cause, and showing the term and day of the term, month, and year in which the same was rendered, as also of the order granting an appeal in the said cause, as fully as the same remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 30th day of December, A. D. 1895.

THOS. B. RODGERS,
Clerk Circuit Court.

And afterwards, to wit, on the 8th day of January, the appellant in said cause filed its abstract of the record under rule 11 of this court; which said abstract is in words and figures as follows, viz:

5 In the Supreme Court of Missouri, April Term, A. D. 1896.

PETER TOURVILLE, Respondent,
vs.
WABASH RAILROAD COMPANY, Appellant.

Appeal from the circuit court of the city of St. Louis, Missouri, Hon. James E. Withrow, circuit judge.

Abstract.

This is an action to recover eighty-one dollars ($81) alleged to be due the plaintiff from defendant as wages, and the question in issue here is whether the defendant should pay that amount once or twice.

The defendant's contention is that the amount due from it to the plaintiff has already been sequestered by a judgment against it as garnishee in a court of competent jurisdiction in the State of Illinois, and that the learned circuit judge below refused to give full faith and credit to that judgment, as required by the Constitution of the United States.

The proceedings are as follows:

On the 12th day of March, 1887, at Belleville, in the State of Illinois, the plaintiff Tourville executed a promissory note for the sum of one hundred dollars in favor of Alexander Flannigan, a lawyer, then, as now, living in East St. Louis, in that State (defendant's original bill of exceptions, page 6).

On the 27th day of June, 1887, a payment of fifteen dollars was made on said note (defendant's original bill of exceptions, page 6).

On the 3rd day of June, 1891, said Flannigan brought suit upon said note, amounting then to $132, by attachment against Tourville, alleging that said Tourville then resided in the city of St. Louis, Missouri, and caused the defendant to be summoned as garnishee (defendant's original bill of exceptions, pages 5, 6, 7, and 8).

6 Said cause was set for trial July 13th, 1891, before James H. Wyatt, a justice of the peace, in the city of East St. Louis, Illinois (defendant's original bill of exceptions, page 9).

At that time the defendant was a consolidated railway corporation, duly and separately organized under the laws of Illinois and Missouri, and having a resident agent in East St. Louis (defendant's original bill of exceptions, page 2).

Plaintiff was then in defendant's employ in Missouri and residing there with his family, and his wages for May and June, 1891, amounted to $81.98, and are not subject to attachment, execution, or garnishment under the laws of the State of Missouri (defendant's original bill of exceptions, pages 2, 3, and 14).

The plaintiff Tourville and his attorney, Virgil Rule, Esq., were each orally notified by defendant prior to the trial and in time for a defense to be interposed of the pendency of the suit in East. St. Louis (defendant's original bill of exceptions, pages 2 and 3).

On the 10th of June, 1891, the plaintiff Tourville commenced a

suit against the defendant for the entire amount of wages due him ($81) before James McCaffery, justice of the peace, in the city of St. Louis, Missouri (defendant's original bill of exceptions, page 1).

On the 22d day of June, 1891, the plaintiff Tourville obtained a judgment by default against the defendant in said cause for the sum of $75, and thereafter defendant duly perfected its appeal to the circuit court of the city of St. Louis, Missouri; that on the 13th day of July, 1891, said Flannigan obtained a judgment by default against Tourville for the sum of $132, in East St. Louis, Illinois, on the note above described (defendant's original bill of exceptions, page 10).

On the 23rd day of July, 1891, the defendant here and garnishee in East St. Louis, as required by the laws of Illinois, filed its
7 answer there, stating that the sum of $71.83 was due to Tourville for wages while in its employ in May, 1891, and also pleading and claiming for him the exemptions given to heads of families by the laws of Illinois as well as Missouri, and also pleading that Tourville had recovered final judgment against defendant for said wages in the courts of Missouri, and also that said wages were earned in the State of Missouri under a contract made in said State, under which said contract said wages were payable in the city of St. Louis, Missouri, and nowhere else, and also *but* said Tourville was the head of a family, residing with the same in the State of Missouri, and had no property except his wearing apparel, and claiming said sum as exempt under the laws of Missouri (defendant's original bill of exceptions, pages 12, 13, and 14).

On the 25th day of July, 1891, said cause coming on for trial, defendant proved the facts pleaded in the answer above referred to; but, notwithstanding these facts, a judgment was rendered by James H. Wyatt, justice of the peace, in East St. Louis, against the defendant as a garnishee, for the sum of $21.83, in the case of Flannigan *vs.* Tourville, from which defendant perfected an appeal to the city court of East St. Louis (defendant's original bill of exceptions, page 11).

A short time after this suit had been instituted and before any judgment had been rendered in either cause, either in the city of St. Louis, Missouri, or in the city of East St. Louis, Illinois, the defendant offered to pay to Tourville and his attorney, Virgil Rule, Esq., the balance, when ascertained, due Tourville as wages after the allowance of his exemptions in the garnishment case above described, provided the defendant was released as such garnishee (defendant's original bill of exceptions, page 21). This offer was refused by Tourville and his attorney, each claiming that the full amount of his wages was exempt from execution, and that said wages could not be impounded by the courts of Illinois, and each insisting upon the payment to Tourville by defendant of the full amount of Tourville's wages, notwithstanding the pendency of the garnishment proceedings (defendant's original bill of ex-
8 ceptions, pages 21 and 22). On the 21st day of December, 1891, the garnishment case above described came on for trial in the city court of East St. Louis. The plaintiff did not appear,

but the garnishee, the defendant here, being required by the laws of Illinois so to do, did appear and demanded a jury, who sustained the attachment and found a verdict against Tourville, the plaintiff here, in favor of Flannigan for the sum of $132, and thereupon the court heard the evidence upon the answer of the garnishee, and, notwithstanding the proof of the facts set up in said answer, the court found a verdict against the garnishee in favor of Tourville, for the use of Flannigan, for $21.83, with costs, and that execution issue therefor (defendant's original bill of exceptions, page 16).

On the 6th day of January, 1892, an execution was issued in East St. Louis, in the garnishment case above described, against the defendant for said judgment of $21.83 and costs, amounting in all to the sum of $43.38, which defendant paid (defendant's original bill of exceptions, page 4).

On the 23d day of January, 1892, this cause was submitted to his honor James E. Withrow, circuit judge, sitting as a jury, upon a stipulation containing the facts hereinabove set forth (defendant's original bill of exceptions, page 2).

On the 6th day of April, 1892, said court rendered a judgment in favor of the plaintiff as follows:

Whole amount of wages	$81.98
Less judgment and costs paid by defendant in East St. Louis	43.38
Judgment against defendant	$38.60

(Defendant's original bill of exceptions, page 19.)

From this judgment the plaintiff perfected an appeal (defendant's original bill of exceptions, pages 19 and 23). On the 26th day of March, 1892, the judgment of the said court was reversed in the St. Louis court of appeals, and the following opinion and mandate was filed therein:

9 In the St. Louis Court of Appeals, March Term, A. D. 1895, Tuesday, March 26th, A. D. 1895.

PETER TOURVILLE, Plaintiff in Error and Respondent, *vs.* THE WABASH RAILROAD COMPANY, Defendant in Error and Appellant.	Nos. 5485 and 5764. Error and Appeal from Circuit Court, City of St. Louis.

Opinion of the Court.

The trial court rendered a judgment for plaintiff for $38.60. From this judgment the plaintiff prosecutes his writ of error, claiming that he was entitled to judgment, on the conceded facts, for the entire amount sued for, which was $81. The defendant, on the other hand, appeals from the judgment, claiming that the plaintiff was entitled to judgment only for $21.83, on the conceded facts, and that the court erroneously taxed the costs against the defendant, as

it had tendered that amount to the plaintiff prior to the institution of the suit. It will thus appear that while the parties, instead of prosecuting cross-appeals, bring their grievances to this court in independent proceedings—the one by writ of error and the other by appeal—that the entire controversy arises upon the same record, and that the disposition of the complaints of either party necessarily disposes of the complaints of the other.

Touching the facts of the case there is no controversy whatever, as they appear partly by an agreed statement, partly by documentary evidence, and partly by uncontroverted oral evidence. The judgment of the court, therefore, is a mere conclusion of law. The facts thus appearing are as follows: The defendant is a consolidated corporation, acting under several charters, one of which it obtained in the State of Missouri and another in the State of Illinois. The plaintiff was in the defendant's employ in the State of Missouri and earned wages amounting to $80.98, which the defendant at the time hereinafter stated owed to the plaintiff. The plaintiff
10 sued the defendant for the recovery of these wages before a justice of the peace in the city of St. Louis. That suit was instituted on the 10th day of June, 1891. The defendant not appearing, judgment was rendered against it by default. From this judgment the defendant appealed to the circuit court, where, upon a retrial of the cause, the judgment for $38.60 was rendered in plaintiff's favor, of which now both parties complain.

The defense interposed by the defendant to the recovery consists of the following conceded facts: One Flannigan, a resident of East St. Louis, in the State of Illinois, brought a suit by attachment before a justice of the peace in said city and State against the plaintiff on the 3d of June, 1891, and on the same day served a notice of garnishment on the defendant corporation, incorporated in the State of Illinois. The affidavit for attachment filed in that suit stated that Tourville was a non-resident of the State of Illinois and was a resident of St. Louis, in the State of Missouri. The justice thereupon made an order of publication, returnable on the 13th day of July, 1891, which order was in due form, and upon which the constable made the following return:

"Executed the within notice by posting one notice at the post-office, and one notice at Egler's saloon, and one notice at the justice's office, this 29th day of June, 1891."

Section 53, chapter 11, of the Revised Statutes of Illinois provides, among other things, that the notice "in such cases shall be posted at three public places *in the neighborhood of the justice*, and if the place of residence of the defendant is stated in the affidavit for attachment, he (the constable) shall, at the time, *mail one copy of the notice addressed to such defendant*, at such place of residence; and on or before that day he shall return the notice delivered to him by the justice, with an endorsement thereon, stating the time when, and the places where, he posted *and mailed* copies, as herein required."

(The italics are our own.)

11 The defendant company informed Tourville of the fact that suit had been brought against him by attachment in East

St. Louis, and that it had been garnished in said suit, and requested him to appear and defend the suit, but he failed to do so. Judgment by default was rendered against Tourville in East St. Louis, and thereupon the plaintiff in that suit (Flannigan) proceeded there against the defendant as garnishee. The defendant answered, setting up in its answer that it was not subject to garnishment, because the debt it owed to Tourville was contracted in the State of Missouri and payable there, and, further, that it was exempt by the laws of the State of Missouri from attachment, because Tourville was the head of a family and the amount attached consisted of wages for the last thirty days. The defendant also claimed that the debt was exempt from attachment by the laws of the State of Illinois. The justice allowed the Illinois exemption, which amounted to $50, but denied the Missouri exemption and rendered judgment against the defendant company for the residue of the claim. From this judgment the defendant company appealed to the city court of East St. Louis, where the judgment was affirmed, and the defendant company prosecuted no further appeal.

It was decided by the supreme court of the State of Illinois, in Wabash Railroad Company *vs.* Dougan, 124 Ill., 248, that the defendant company, under the circumstances above stated, was subject to garnishment, and that it could not in such garnishment proceedings claim for one of its employés an exemption from attachment provided for by him by the State where he resides, but that it could claim for him the exemption from attachment provided by the laws of the State of Illinois. It results that the judgment rendered against the defendant company as garnishee of Tourville by the city court of East St. Louis was a valid judgment, according to the laws of the State where rendered, and is a full protection to the defendant company, provided the judgment against Tourville in East St.
Louis was obtained on services provided by the laws of the
12 State of Illinois. The plaintiff concedes this, but maintains
that the judgment rendered against him by the justice was void for want of jurisdiction, and, being the foundation of the entire garnishment proceeding, the latter proceeding was likewise void. This contention is based upon the provisions of sec. 53, *supra*, which we have placed in italics, and is, in brief, that the constable's return of service fails to show that two of the notes posted were posted at public places *in the neighborhood of the justice*, and, furthermore, fails to show that the constable at any time *mailed a copy of the notice to him, Tourville, at the place of his residence*, although such place of residence was stated in the affidavit for attachment.

A garnishee must, for his own protection, see that jurisdiction of the defendant has been properly acquired by the court. Drake on Attachment, sec. 695; McCloon *vs.* Beattie, garnishee, 46 Mo., 391; Eppstein *vs.* Salorgne, 6 Mo. App., 352. Under the decisions of the courts in the State of Illinois, as well as under the decisions of this State, constructive service can confer no jurisdiction unless the requirements of the statute are strictly complied with. The case of Thormeyer *vs.* Sisson, 83 Ill., 188, is directly in point. Had the defendant company shown, when it was proceeded against on the

judgment against Tourville, that such judgment was obtained in disregard of the mandates of the statute, and hence without jurisdiction, no valid judgment could have been rendered against it. The facts showing want of jurisdiction appeared by the papers on file in the justice's office, and it was, under all the decisions, the duty of the defendant company to ascertain whether the court had jurisdiction of Tourville. The defendant company, however, failed to make that defense in its answer.

It is contended here that the plaintiff should be held estopped from questioning the validity of that judgment, because he was personally informed by the defendant company that a suit was pending against him in the city of East St. Louis, and on what day such suit was set for trial. That argument is inadmissable because jurisdiction cannot be conferred by estoppel. In Evans *vs.*
13 Pierce, 3 Ill., 496, the defendant, who was not properly served, sent a letter to the justice, consenting that judgment might be rendered against him for a certain amount, yet it was held he was not estopped from challenging the validity of the judgment thus rendered. The question in these cases is not whether the defendant knew that an action was pending against him, but whether notice of that fact was brought home to him in the manner provided by statute. The law deals with notice and not with knowledge.

It results from the foregoing that the court erred in holding that the defendant company was entitled to credit for the amount paid by it in the garnishment proceedings. The judgment is reversed and the cause remanded, with directions to the trial court to enter judgment for plaintiff for eighty-one dollars, the amount sued for and admittedly due if we disregard the garnishment proceedings. All the judges concur.

R. E. ROMBAUER.

A true copy of the opinion.

Witness my hand and the seal of the St. Louis court of appeals this 26th day of March, A. D. 1895.

(Signed) [SEAL.] JNO. LEWIS, *Clerk.*

In the St. Louis Court of Appeals, March Term, 1895.

TUESDAY, *March 26th*, 1895.

PETER TOURVILLE, Plaintiff in Error and Respondent, *vs.* THE WABASH RAILROAD COMPANY, Defendant in Error and Appellant.	(5485 & 5764.) Error and Appeal from Circuit Court, City of St. Louis.

Now again come the parties aforesaid, by their respective attorneys, and the court, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said circuit court, city of St. Louis, be reversed, annulled, and for naught held and esteemed; that the
14 said plaintiff in error and respondent be restored to all things which he has lost by reason of the said judgment; that the said

cause be remanded to the aforesaid circuit court, city of St. Louis, with directions "to enter judgment for plaintiff for eighty-one dollars, the amount sued for," in conformity with the opinion of this court, herein delivered, and that the said plaintiff in error and respondent recover of the said defendant in error and appellant his costs and charges herein expended and have execution therefor. Opinion filed.

STATE OF MISSOURI, *ss*:

I, John Lewis, clerk of the St. Louis court of appeals, certify that the above and foregoing is a full, true, and complete copy of the judgment rendered in the above-entitled cause as fully as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis,
[SEAL.] this second day of April, A. D. eighteen hundred and ninety-five.

(Signed) JNO. LEWIS, *Clerk.*

On the 3d day of May, 1895, the following further proceedings were had in said cause before his honor James E. Withrow, circuit judge of the circuit court of the city of St. Louis, Mo.

The defendant offered the following testimony:

First. The affidavit of Alexander Flannigan, hereto attached, in the case of Alexander Flannigan *vs.* Peter Tourville, instituted in the city of East St. Louis, Ill., on the 1st day of April, 1895.

Second. The attachment bond in the case of Alexander Flannigan *vs.* Peter Tourville, instituted in the city of East St. Louis, Ill., on the 1st day of April, 1895, before James H. Wyatt, justice of the peace, in said city.

Third. The writ of attachment in said cause, with the service thereon, upon the defendant as garnishee.

15 STATE OF ILLINOIS, } *ss*:
St. Clair County, }

Alex. Flannigan, being duly sworn, says that he has a just demand against Peter Tourville on account of a note, and the affiant believes he is entitled to recover of said Peter Tourville, after allowing all just credits and set-offs, one hundred and thirty-nine dollars and forty cents, which is now due, and that he has good reason to believe, and does believe, that the said Peter Tourville is not a resident of the State, and that upon diligent inquiry he has been unable to ascertain his exact place of residence.

(Signed) ALEX. FLANNIGAN.

Subscribed and sworn to before me this 1st day of April, 1895.

JAMES H. WYATT, *J. P.*

Know all men by these presents that we, A. Flannigan and Dora Flannigan, are held and firmly bound unto Peter Tourville in the penal sum of two hundred and fifty dollars.

The condition of the above obligation is such that whereas the above-bounden A. Flannigan hath, on the day of the date hereof, prayed an attachment at the suit of A. Flannigan against the personal estate of the above-named Peter Tourville for the sum of $139.00, and the same being about to be sued out, returnable on the 26th day of April, before James H. Wyatt, justice of the peace:

Now, if the said A. Flannigan shall prosecute his suit with effect, or, in case of failure therein, shall well and truly pay and satisfy the said Peter Tourville all such cost in such suit and such damages as the said Peter Tourville may sustain by reason of wrongfully suing out said attachment, then the above obligation to be null and void; otherwise to remain in full force and effect.

(S'g'd) ALEX. FLANNIGAN. [SEAL.]
DORA FLANNIGAN. [SEAL.]

This 1st day of April, A. D. 1895.

JAS. H. WYATT, *J. P.*

16 STATE OF ILLINOIS, } ss:
St. Clair County, }

The People of the State of Illinois to any constable of said county, Greeting:

Whereas Alex. Flannigan hath complained that Peter Tourville is justly indebted to the said Alex. Flannigan in the sum of $139.40, and the said Peter Tourville is not a resident of the State, and that upon diligent inquiry he has been unable to ascertain his exact place of residence, and the said Alex. Flannigan having given bond and security according to law:

We therefore command you that you attach so much of the personal estate of the said Peter Tourville to be found in your county as shall be of value sufficient to satisfy the said debt and costs, and such personal estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereon, according to law, before the undersigned justice of the peace, and that you summons the said Peter Tourville to appear before me, at my office, in East St. Louis, in said county, on the 27th day of April next, A. D. 1895, at 2 o'clock p. m., and that you also summon as garnishee all persons who the plaintiff or his agents shall direct, to appear before me at the same time and place, and then and there to answer what may be objected against him or them, when and where you shall make known how you have executed this writ; and have you then and there this writ.

Giuen under my hand and seal this 1st day of April, A. D. 1895.

(S'g'd) JAMES H. WYATT, *J. P.* [SEAL.]

(On the back of this writ appeared the following :)

Writ of Attachment.

ALEX. FLANNIGAN
—
PETER TOURVILLE. } No. —.

Sum demanded..... $139.40
Costs..... 7.50

Executed by summoning the Wabash R. R. Company as garnishee by delivering a true copy hereof to T. H. Anderson,
17 agent of said company, and paying him $1.10 as garnishee fee; no superior officer of said company found in my county; the defendant not found in my county. This 1st day of April, 1895.

(Signed) B. T. BLYTHE, *Constable.*

Fee, $1.20.

It was admitted by counsel for plaintiff, Virgil Rule, Esq., and counsel for defendant, George S. Grover, Esq., that James H. Wyatt, justice of the peace in the city of East St. Louis, Illinois, would, if present, testify that the papers above described and offered in evidence, as aforesaid, by defendant were correct transcripts of the originals now on file in his office, and that said transcripts might be offered in said cause with like effect as if the original- themselves were produced and subject to the same objections. The plaintiff's counsel, Virgil Rule, Esq., objected to the introduction of the above-described papers; which objection was sustained by the court; to which ruling of the court defendant, by its said counsel, duly excepted and saved its exceptions.

And it was further admitted by said counsel that the defendant never owed plaintiff any other debt than the $81 that is now sought to be impounded by the proceedings in the case of Alexander Flannigan, plaintiff, *vs.* Peter Tourville, defendant, and The Wabash Railroad Company, garnishee, instituted in the city of East St. Louis, Illinois, April 1st, 1895, above referred to, and that it is the same debt that was impounded in the proceedings in the case *between the same parties, begun in the same court,* in East St. Louis, on June 3d, 1891, as set forth above.

Judgment.

Said court, sitting as a jury, as aforesaid, then entered judgment in said cause in favor of the plaintiff for the sum of $81, in accordance with the mandate of the St. Louis court of appeals above referred to; — which action of the court the defendant, by its counsel, then and there duly excepted and saved its exceptions.

18 *Motion for New Trial.*

On the 3d day of May, 1895, within four days after the entry of said judgment, the defendant filed its motion for new trial as follows, to wit:

In the Circuit Court of the City of St. Louis, Missouri, April Term, A. D. 1895.

PETER TOURVILLE, Plaintiff,
vs.
WABASH RAILROAD COMPANY, Defendant.

Now comes the defendant in the above-entitled cause and prays the court to set aside the judgment therein entered in said cause on the 3d day of May, 1895, and grant said defendant a new trial for the following reasons, to wit:

First. Because said judgment is against the law.

Second. Because said judgment is for the wrong party.

Third. Because the court excluded proper, competent, material, and relevant testimony in the cause offered by the defendant to the effect that subsequent to the reversal of this cause in the St. Louis court of appeals and prior to the entry of the judgment by this court an attachment proceeding was commenced in a court of competent jurisdiction in the State of Illinois against the defendant in this cause as garnishee, wherein and whereby all debts due to the plaintiff by the defendant were attached in said court, and that said cause is still pending and undetermined in the courts of Illinois.

Fourth. Because this court has by excluding said testimony and by entering the judgment in this cause refused to give full faith and credit to a valid proceeding instituted against the defendant in a sister State.

Fifth. Because the result of the judgment entered by this court in this case will be to compel the defendant to pay the sum therein adjudged to plaintiff, and also to compel the defendant to pay a like sum on a judgment rendered in Illinois in the plaintiff's favor for the same amount.

19 Sixth. Because the result of the court's action in this case will be to compel defendant to pay the same debt to plaintiff twice, once in Illinois and once in Missouri.

Seventh. Because the ruling and order of the court in this cause is in violation of section 1 *or* article 4 of the Constitution of the United States.

Eighth. Because the court refuses to indulge in the presumption that the proceeding in Illinois was valid and refused to give any faith or credit thereto.

Ninth. Because upon the whole record the judgment of this court is erroneous.

(Signed) GEORGE S. GROVER,
Attorney for Defendant.

The court, on the 10th day of June, A. D. 1895, overruled said motion; to which ruling, order, and action of the court the defendant, by its counsel, then and there duly excepted and saved its exceptions.

The defendant thereupon, on the 22d day of June, 1895, presented to Hon. James E. Withrow, circuit judge, as aforesaid, its bill of exceptions in said cause and prayed that the same might be signed, sealed, and made a part of the record, which was done by said judge on said day.

Be it further remembered that on the 25th day of June, 1895, the defendant filed its motion to modify said judgment as follows, to wit:

And on the 5th day of July, 1895, filed the following transcript as an exhibit (A) to said motion as follows:

"In the Circuit Court of the City of St. Louis, Mo., June Term, A. D. 1895.

PETER TOURVILLE, Plaintiff,
vs.
WABASH RAILROAD COMPANY, Defendant. } No. 85743.

Now comes the defendant in the above-entitled cause and states that prior to the rendition of any final judgment in this cause, to wit, on the 1st day of April, 1895, a garnishment proceeding was served upon it in a cause entitled Alexander Flannigan *vs.* Peter Tourville, defendant; Wabash Railroad Company, garnishee, then pending before James H. Wyatt, justice of the peace, in the city of East St. Louis, in the county of St. Clair and State of Illinois.

That in due time this defendant filed its answer in said cause, pleading the exemptions alleged to be due to Peter Tourville in the State of Illinois.

That thereafter, to wit, on the 14th day of June, 1895, said cause came on for trial before said justice in said city, county, and State, wherein it was judicially determined that said Peter Tourville was not a resident of said State of Illinois, and that upon diligent inquiry his exact place of residence was not located; whereupon said justice did on said 14th day of June, 1895, render judgment against this defendant as garnishee in said proceeding for the sum of $81 and costs.

Defendant says that the proceeding in East St. Louis hereinbefore recited was prior in point of time as well as prior in right to the subsequent judgment in favor of Peter Tourville entered by this honorable court on the 3d day of May, 1895, in this, to wit, that the Illinois proceeding was commenced against this defendant long prior to the entry of said judgment by this honorable court.

Wherefore defendant prays this honorable court to modify its said judgment and to deduct therefrom the judgment rendered against this defendant as garnishee, in the city of East St. Louis,

county of St. Clair, and State of Illinois, as hereinbefore set forth, and for other and proper relief.

Defendant further states that unless the judgment of this court is so modified that defendant will be compelled to pay said sum of $81 in East St. Louis, Illinois, and also in the State of Missouri, when the undisputed fact is, and has always been, in this proceeding that the sum of $81, and that sum only, is due to said Peter Tourville by this defendant.

(Signed) GEO. S. GROVER,
Attorney for Defendant."

21 Be it remembered that the following is a true copy of the affidavit of attachment in the following cause, to wit:

Writ.

STATE OF ILLINOIS, } ss:
St. Clair County, }

Alex. Flannigan, being duly sworn, says that he has a just demand against Peter Tourville on account of a note, and the affiant believes that he is entitled to recover of said Peter Tourville, after allowing all just credits and set-offs, one hundred thirty-nine dollars and forty cents, which is now due, and that he has good reason to believe and does believe that the said Peter Tourville is not a resident of the State of Illinois, and upon diligent inquiry he has been unable to ascertain his exact place of residence.

ALEX. FLANNIGAN.

Subscribed and sworn to before me this 1st day of April, A. D. 1895.

JAMES H. WYATT, *J. P.*

Filed June 21st, 1895, at 11.45 a. m.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the attachment bond in the following cause, to wit:

Bond.

Know all men by these presents that we, Alex. Flannigan and Dora Flannigan, are held and firmly bound unto Peter Tourville in the penal sum of two hundred fifty dollars.

The condition of the above obligation is such that whereas the above-bounden Alex. Flannigan hath, on the day of the date hereof, prayed an attachment at the suit of Alex. Flannigan against the personal estate of the above-named Peter Tourville for the sum of $139.40, and the same being about to be sued out, returnable on the 27th day of April, before James H. Wyatt, justice of the peace:

22 Now, if the said Alex. Flannigan shall prosecute his suit with effect, or in case of failure therein shall well and truly pay and satisfy the said Peter Tourville all such costs in such

suit and such damages as the said Peter Tourville may sustain by reason of wrongfully suing out said attachment, then the above obligation to be null and void; otherwise to remain in full force and effect.

ALEX. FLANNIGAN. [SEAL.]
DORA FLANNIGAN. [SEAL.]

This 1st day of April, A. D. 1895.

JAMES H. WYATT, *J. P.*

Filed June 21st, 1895, at 11.45 a. m.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the writ of attachment in the following cause, to wit:

Summons.

STATE OF ILLINOIS, } ss:
St. Clair County, }

The People of the State of Illinois to any constable of said county, Greeting:

Whereas Alex. Flannigan hath complained that Peter Tourville is justly indebted to the said Alex. Flannigan in the sum of $139.40, and the said Peter Tourville is not a resident of the State of Illinois, and that upon diligent inquiry he has been unable to ascertain his exact place of residence, and the said Alex. Flannigan having given bond and security according to law:

We, therefore, command you that you attach so much of the personal estate of the said Peter Tourville, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, and such personal estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereon, according to law, before the undersigned justice of the peace, and that you summons the said Peter Tourville to appear before
23 me at my office, in East St. Louis, in said county, on the 27th day of April next, A. D. 1895, at 2 o'clock p. m., and that you also summon as garnishees all persons who the plaintiff or his agent shall direct to appear before me at the same time and place, and then and there to answer what may be objected against him or them, when and where you shall make known how you have executed this writ, and have you then and there this writ.

Given under my hand and seal this 1st day of April, A. D. 1895.

JAMES H. WYATT, *J. P.* [SEAL.]

On the back of which writ appears the following endorsement:

Service.

Executed by summoning the Wabash R. R. Company, as garnishee, by delivering a true copy hereof to T. W. Anderson, agent of said

company, and paying him $1.10 as garnishee fee. No superior officer of said company found in my county; the defendant not found in my county. This 1st day of April, 1895.

B. T. BLYTHE, *Constable.*

Filed June 21st, 1895, at 11.45 a. m.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the attachment notice in the following cause, to wit:

Notice.

STATE OF ILLINOIS, } ss:
St. Clair County, }

In Justice's Court, before James H. Wyatt, J. P.

ALEX. FLANNIGAN } Demand, $139.40.
vs.
PETER TOURVILLE. }

To the above-named defendant:

You are hereby notified that an attachment has been issued by the undersigned justice of the peace of St. Clair, in and
24 for said county, at the instance of the said plaintiff, against your personal property; that the said attachment was issued for the sum of one hundred thirty-nine and $\frac{40}{100}$ dollars, which amount the plaintiff claims to be due to him from you; that the cause will be tried before me, at my office, in East St. Louis, on the 15th day of May, A. D. 1895, at 2 o'clock p. m., and that unless you shall appear at the time and place fixed for trial, judgment will be entered by default and the property attached ordered to be sold to satisfy the same.

Witness my hand this 29th day of May, A. D. 1895.

JAMES H. WYATT, *J. P.*

On the back of which notice appears the following endorsement, to wit:

Posting.

Executed the within notice by posting one notice at M. Joyce's store, and one notice at the Workingmen's bank, and one notice at the justice's office, the same being three public places in the neighborhood of the justice's office, and by mailing one notice to the defendant, Peter Tourville, at St. Louis, Missouri, his last known place of residence.

Dated this 29th day of May, 1895.

B. T. BLYTHE, *Constable.*

Fees, $1.00.

3—250

Filed June 21st, 1895, at 11.45 o'clock a. m.

THOMAS MAY,
Circuit Clerk.

Be it remembered that the following is a true copy of the note in the following case, to wit:

Note.

$100.00. BELLEVILLE, ILL., *M'ch* 12, 1887.

One day after date I promise to pay to the order of Alexander Flannigan one hundred dollars, at ——, value received, with interest — eight per cent. per annum.

25 P. TOURVILLE.

No. —. Due —— —, ——.

Filed June 21st, 1895, at 11.45 o'clock a. m.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the transcript filed in the following cause, to wit:

Transcript.

STATE OF ILLINOIS, }
St. Clair County. }

In Justice's Court, before James H. Wyatt, J. P.

ALEX. FLANNIGAN }
vs. } Attachment. Demand, $139.40.
PETER TOURVILLE. }

1895, April 1st, affidavit and bond filed; writ issued, returnable on the 27th day of April, 1895, at 2 o'clock p. m., and delivered to Constable B. T. Blythe to execute.

1895, April 1st, writ returned duly executed by summoning the Wabash Railroad Company, as garnishee, by delivering a true copy hereof to T. W. Anderson, agent of said company, and paying him $1.10 as garnishee fee; no superior officer of said company found in my county; the defendant's costs, $10.95; Peter Tourville not found in my county this 1st day of April, 1895. B. T. Blythe, constable. 1895, April 27th, at 3 o'clock p. m., at the time set for trial, said cause was continued for service by publication to the 15th day of May, 1895, at 2 o'clock p. m. 1895, April 29th, notices issued and delivered to Constable B. T. Blythe to execute. 1895, April 29th, notices returned duly executed by posting one notice at M. Joyce's store, and one notice at Workingmen's bank, and one notice at the justice's office, the same being three public places in the neighborhood of the justice, and by mailing one notice to the defendant, Peter Tourville, St. Louis, Missouri, this 29th day of April, 1895. B. T. Blythe, constable.

1895, May 15th, at 3 o'clock p. m., at the time set for trial, plaintiff in court and ready for trial, case called, and the defendant, Peter Tourville, though three times called, came not, default
26 made, evidence heard, and from the evidence adduced the court sustained the attachment, and did adjudge and determine that the plaintiff have and recover of the defendant, Peter Tourville, the sum of one hundred thirty-nine dollars and forty cents and the costs of suit, and said cause was continued as to the garnishee defendant, The Wabash R. R. Company, to the 25th day of May, 1895, at 2 o'clock p. m. 1895, May 25th, at the time set for trial, said cause was continued to the 4th day of June, 1895, at 2 o'clock p. m. 1895, June 11th, the garnishee defendant, The Wabash R. R. Company, filed its answer that the sum of eighty-one dollars and ninety-eight cents was due the defendant, Peter Tourville, and pleading that he was the head of a family, residing with and supporting same. 1895, June 4th, said cause was continued to the 14th day of June, 1895, at 2 o'clock p. m. 1895, June 14th, at 3 o'clock p. m., at the time set for trial, the plaintiff in court, case called, The Wabash R. R. Company, the garnishee defendant, though three times called, came not; thereupon the court did adjudge and determine that the plaintiff have and recover of the garnishee defendant, The Wabash R. R. Company, the sum of eighty-one dollars and ninety-eight cents, with costs, and that the plaintiff have execution therefor.

JAMES H. WYATT, *J. P.* [SEAL.]

STATE OF ILLINOIS, } ss:
St. Clair County, }

I, James H. Wyatt, a justice of the peace in and for said county, do hereby certify that the foregoing transcript of the proceedings had before me in the above-entitled cause is a true and correct copy of the note on file, and of the affidavit and bond, and writ of attachment, and of the notice and of the entries as they appear upon my docket.

Given under my hand and seal this 20th day of June, 1895.

JAMES H. WYATT, *J. P.* [SEAL.]

Filed June 21st, 1895, at 11.45 a. m.

THOMAS MAY, JR.,
27 *Circuit Clerk, St. Clair Co., Ill.*

STATE OF ILLINOIS, } ss:
St. Clair County, }

I, Thomas May, Jr., clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect, and complete copy of the affidavit of attachment, the attachment bond, the writ of attachment and officer's return, the attachment notice and officer's return, the note, and the justice's transcript, the same being a complete record of all the papers on file of record as they appear in my office, in the case of Alex. Flannigan *vs.* Peter Tourville.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office, in Belleville, this 21st day of June, A. D. 1895.

THOMAS MAY, JR., *Clerk.*

STATE OF ILLINOIS, } ss:
St. Clair County, }

I, A. S. Wilderman, one of the judges of the third judicial circuit of the State of Illinois and presiding judge of the circuit court of said St. Clair county, do hereby certify that Thomas May, Jr., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same clerk of the circuit court of St. Clair county aforesaid (which county is in said judicial circuit) and keeper of the records and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal this 21st day of June, A. D. 1895.

(Signed) A. S. WILDERMAN. [SEAL.]

28 STATE OF ILLINOIS, } ss:
St. Clair County, }

I, Thomas May, Jr., clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that A. S. Wilderman, whose genuine signature is appended to the foregoing certificate, was at the time of signing the same one of the judges of the third judicial circuit of the State of Illinois (of which judicial circuit the said St. Clair county forms a part), duly commissioned and qualified; that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office, in Belleville, this 21st day of June, A. D. 1895.

THOMAS MAY, JR., *Clerk.*

And on the 12th day of October, 1895, defendant filed the following motion to recall and quash an execution in said cause as follows, to wit:

Motion to Quash Execution.

In the Circuit Court of the City of St. Louis, Mo.

Room No. 3.

PETER TOURVILLE, Plaintiff,
vs.
WABASH RAILROAD COMPANY, Defendant.

Now comes the defendant in the above-entitled cause, by its attorneys, and states to this court that on or about the 3d day of May,

1895, a judgment was rendered therein by this honorable court in favor of the plaintiff for the sum of eighty-one dollars ($81).

That on the same day, to wit, on the 3d day of May, 1895, the defendant filed its motion for new trial in said cause.

That on the 4th day of June, 1895, defendant filed its brief in support of said motion.

29 That on the 10th day of June, 1895, said motion for new trial was overruled.

That on the 22nd day of June, 1895, within the time allowed by this honorable court for this purpose, defendant filed its bill of exceptions in said cause, excepting to said judgment and all rulings afterwards made as well as the overruling of said motion for new trial by this honorable court; which said bill of exceptions was on said day signed, sealed, and made a part of the record in said cause by this court and filed in this cause by defendant.

That on the 24th day of June, 1895, defendant filed its motion to modify said judgment.

That on the 5th day of July, 1895, defendant filed, as a part of said motion to modify said judgment, a transcript from a court of competent jurisdiction in the State of Illinois, showing that a judgment had been rendered against it as garnishee in said cause, in a cause commenced in said courts of said State prior to the rendition of judgment in this cause—that is to say, prior to May 3d, 1895—wherein in said courts of Illinois defendant, as said garnishee, was adjudged and required to pay the sum of $81 due from it to said Tourville, it being the same $81 now in controversy in this cause.

That on the 5th day of July, 1895, plaintiff filed a motion in this cause to strike defendant's bill of exceptions from the file.

That on the 11th day of October, 1895, plaintiff caused an execution to be issued against the defendant for the amount of said judgment so rendered, as aforesaid, on the 3d day of May, 1895, for the sum of $81 and for interest and cost thereon, amounting in all to the sum of $114.40, as will more fully appear by an itemized statement thereof served upon defendant by the sheriff of the city of St. Louis; which said statement is hereto attached to this motion, made a part thereof, and marked Exhibit "A."

Defendant says that its said motion to modify judgment in this cause in this court has not been passed upon by this honor-
30 able court, nor has plaintiff's motion to strike its bill of exceptions from the files in said cause been passed upon by this honorable court, but that said motions were and are still under advisement by this honorable court.

Wherefore defendant prays this court to recall and quash the execution described in this motion and modify its judgment therein by crediting said judgment with the amount paid by defendant, as shown by the transcript now on file in this court, in the courts of Illinois, in a garnishment proceeding had in a court of competent jurisdiction in that State, whereby the only sum the defendant now owes, or ever did owe, to the plaintiff in this cause, to wit, Peter Tourville, has been paid to him or for his use into the courts of Illinois to satisfy a just debt long since due in said State to a cred-

itor of said Peter Tourville, and defendant prays for all proper relief in the premises.

(Signed) GEO. S. GROVER,
Attorney for Defendant.

Execution.

Bring this notice with you.

To the December Term, 1895, of the Circuit Court, City of St. Louis, Wabash Railroad Company *et al.:*

OFFICE SHERIFF OF THE CITY OF ST. LOUIS.

PETER TOURVILLE
vs.
WABASH RAILROAD COMPANY and W. NICHOLS and J. H. MAXON, Securities. } Execution No. 6.

You are hereby notified to call at the sheriff's office without delay and pay above-styled execution against you and your securities.

By so doing you will save additional costs.

HENRY TROLL,
Sheriff of the City of St. Louis,
By JOS. GREUNEWALD, *Deputy.*

31 ST. LOUIS, *October* 11*th*, 1895.

Judgment	$81.00
Interest	2.15
Court costs on face of execution	28.45
Service and commission	2.80
Total	$114.40

EXHIBIT "A."

Notice.

ST. LOUIS, MO., *October* 11*th*, 1895.

Captain Henry Troll, sheriff of the city of St. Louis.

DEAR SIR: Please take notice that the defendant in the case of Peter Tourville, plaintiff, *vs.* Wabash Railroad Company, defendant, will, on or about the 11th of October, 1895, file before his honor James E. Withrow, circuit judge of the city of St. Louis, its motion to quash and recall a certain execution issued in said cause on or about the 11th day of October, 1895, in favor of the plaintiff therein.

You are hereby notified to take no further action in the premises until said motion is determined and to act therein in all things at your peril.

THE WABASH RAILROAD COMPANY,
By GEO. S. GROVER,
Its Attorney of Record in this Cause.

Notice.

ST. LOUIS, MO., *October 11th*, 1895.

Virgil Rule, Esq., attorney, city.

DEAR SIR: Please take notice that the defendant will, not later than October 12th, 1895, file its motion before Hon. Jas. E. Withrow, circuit judge, in court room No. 3, in the city of St. Louis, Mo., its motion to quash and recall the execution issued or caused to be issued by the plaintiff in the case of Peter Tourville, plaintiff, *vs.*
Wabash Railroad Company, defendant, for the reason that
32 the same was improvidently granted, and for the further reason that all sums due or ever due to said Tourville by defendant have been paid over for his use in a proper proceeding in the courts of Illinois.

THE WABASH RAILROAD COMPANY,
By GEO. S. GROVER, *Its Attorney.*

Motions Overruled.

Thereafter the court took said motions and each of them so filed by defendant, as aforesaid, under advisement, and on the 4th day of December, 1895, at the October term of said court, overruled the same; to which ruling and order of the court the defendant at the time, by its counsel, then and there duly excepted, and saved its exceptions.

Appeal Perfected.

On the 7th day of December, 1895, defendant filed its affidavit for appeal, and an appeal to this court was allowed to defendant by the circuit court of the city of St. Louis, Mo.

Bond Filed and Approved.

On the 13th day of December, 1895, defendant filed its appeal bond in this cause; which said bond was approved by the court below.

Bill of Exceptions Signed and Filed.

On the 28th day of December, 1895, within the time allowed by the court for that purpose, by an order duly entered of record in said cause, the defendant's bill of exceptions was signed, sealed, filed, and made a part of the record in said cause by the circuit court of the city of St. Louis, Mo., and thereupon defendant duly perfected its appeal in said cause to this court.

GEO. S. GROVER,
Attorney for Appellant.

And afterwards, to wit, on the 23rd day of October, 1897, the following proceedings were had in division No. 1 of this court in said cause, viz:

33 PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant.

Come now the said parties, by attorneys, and submit this cause to the court on briefs, and upon stipulation it is ordered by the court that the said parties be granted 30 days in which to file briefs.

Which said stipulation is in words and figures as follows, viz:

Supreme Court, State of Missouri, Div. 1, October Term, 1897.

PETER TOURVILLE, Respondent,
vs.
WABASH RAILROAD CO., Appellant. } No. —.

It is hereby stipulated and agreed betwe-n the parties to the above-entitled cause that the same may be taken as submitted and the parties hereto be allowed thirty days in which to file briefs.

VIRGIL RULE,
Attorney for Respondent.
GEO. S. GROVER,
Attorney for Appellant.

And afterwards, to wit, on the 29th day of January, 1898, the further following proceedings were had in division No. 1 in said cause, viz:

PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant.

Now, at this day, upon the court's own motion, it is ordered that this cause be transferred to the court in banc, and set for hearing on the 12th day of April, 1898.

And afterwards, to wit, on the 12th day of April, 1897, the following proceedings were had in court in banc in said cause, viz:

34 PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant.

Come now the said parties, by attorneys, — after argument herein submit these causes to the court.

And afterwards, to wit, on the 21st day of February, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant. } Appeal from Circuit Court, City of St. Louis.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge

that the judgment aforesaid, in form aforesaid by the said circuit court of the city of St. Louis rendered, be in all things affirmed and stand in full force and effect, and that the said respondent recover against the said appellant his costs and charges herein expended, and have therefor execution; opinion filed.

Which said opinion is in words and figures as follows, viz:

In the Supreme Court of Missouri, October Term, 1898. In Banc.

PETER TOURVILLE, Respondent,
vs.
WABASH RAILROAD CO., Appellant. } 7985.

Opinion.

The defendant is a consolidated railway corporation, separately organized under the laws of Michigan, Ohio, Indiana, Illinois, and Missouri, having business offices and agents in all of these States.

On the 3rd of June, 1891, the plaintiff Tourville, a resident of the State of Missouri, being indebted on a promissory note to one Flannigan, a resident of the State of Illinois, the said Flannigan instituted a suit against him by attachment for the recovery
35 of such debt before a justice of the peace in that State, in which, on the same day, the defendant railroad Co. was served with notice of garnishment in that State under the laws thereof. Afterwards, on the 10th of June, 1891, the plaintiff instituted this suit against the defendant railroad company, before a justice of the peace in the city of St. Louis, to recover the sum of $81.98 on account of wages due him, not subject to execution, attachment, or garnishment under the laws of Missouri. The defendant made default, and judgment was rendered against it in the justice's court, and thereupon the defendant took an appeal to the St. Louis city circuit court. In the meantime the attachment suit in Illinois having proceeded to judgment on the 25th of July, 1891, in the justice's court, against the railroad Co., for the sum of $21.80 and costs, on its answer admitting its indebtedness to Tourville on account of the wages aforesaid in the sum of $71.83, but pleading the exemption of the sum from garnishment under the laws of Illinois and Missouri, and that judgment having been affirmed on defendant's appeal by the city court of East St. Louis, in that State, on the 21st of Dec., 1891, and the railroad company having paid that judgment, amounting to the sum of $43.38, on the 6th of Jan., 1892, when this case came on for trial in the St. Louis circuit court on the 23rd of January, 1892, this defendant railroad company interposed that judgment as a defense in part to plaintiff's action, and the circuit court allowed the same as a credit on plaintiff's demand, and rendered judgment in his favor against the defendant for the sum of $38.60, the balance of the amount sued for. From this judgment both parties appealed to the St. Louis court of appeals, where, on the 26th of March, 1895, the judgment was reversed "and the cause remanded with directions to the trial court to enter judgment for plaintiff for $81, the amount sued for." 61 Mo. App., 527.

Afterwards, on the first of April, 1895, and before the mandate of the court of appeals reached the circuit court, Flannigan instituted another suit by attachment against the plaintiff, before a
36 justice of the peace in the State of Illinois, to recover the balance due on his debt, in which, on the same day, the defendant was served with notice of garnishment. The writ in this proceeding was returnable April 27th, 1895, and while the same was pending in Illinois the mandate of the St. Louis court of appeals in this case reached the St. Louis city circuit court, and on the 3rd day of May, 1895, the defendant offered to said court, as evidence in the case, the affidavit, attachment, bond, and writ, with the service thereon upon the defendant as garnishee, in the said second attachment suit so instituted by the said Flannigan against the plaintiff on the first day of April, 1895, in the State of Illinois. To the admission of this evidence the plaintiff objected. His objection was sustained. The defendant excepted, and thereupon the court entered judgment in his favor against the defendant for the said sum of $81, in pursuance of the mandate of the St. Louis court of appeals. The defendant again excepted, and on the same day filed its motion to set aside the judgment and for new trial on the ground that by entering said judgment and rejecting said evidence the court refused to give full faith and credit to a valid proceeding instituted against the defendant in a sister State, in violation of section 1, art. 4, of the Constitution of the United States; which motion was overruled on the 10th day of June, 1895, and the defendant excepted. On the 25th of June, 1895, defendant filed its motion to modify the judgment, and in support of said motion and as a part thereof on the 5th day of July, 1895, filed a transcript and copy of the proceedings in the second attachment suit in Illinois, showing judgment therein against Tourville in favor of Flannigan for $139.30 on the 15th of May, 1895, and judgment in his favor against the railroad company as garnishee for $81.98 on the 14th of June, 1895, and by reason thereof the defendant in its motion asked that the judgment in this case be modified by deducting therefrom the amount of said Illinois judgment. On the 5th of July, 1895, plaintiff filed a motion to strike the defendant's bill of exceptions from the files, and on the 11th day of October, 1895, caused
37 execution to be issued upon the judgment. On the 12th of October, 1895, the defendant filed its motion to quash said execution, assigning the same reasons therefor as in its former motions, and on the 4th of Dec., 1895, the court overruled defendant's motion to modify the judgment and quash the execution; to which action of the court defendant excepted, and thereafter in due time perfected its appeal.

1. In order to convict the circuit court of error much reliance is placed by counsel for defendant upon the case of Hardware & Manufacturing Co. *v.* Lang & Co., 127 Mo., 242, followed in Howland *v.* C., R. I. & P. R'y Co., 134 Mo., in which it was held "that debts have no *situs*, but may be attached in any State other than that in which the debtor is a resident," or, in the language of the *syllabus* of the first case, "Wherever a creditor may maintain a suit to re-

cover his debt it may be attached there as his property, provided the laws of such place authorize it;" while for the plaintiff it is urged that the doctrine of these cases is against the weight of authority and should be overruled. In the view we take of the facts of this case, however, we do not find it necessary to enter into this discussion, and refrain from doing so for the reason that anything therein said might be considered *obiter* the case in hand. Nevertheless, it may be well to note in this connection that the defendant in this case has a separate and independent corporate existence both in this State and in the State of Illinois. "Railroad corporations created by two *no* more States, though joined in their interests, in the operation of their roads, in the issue of their stock, and in the division of their profits so as practically to be a single corporation, do not lose their identity, but each has its existence and its standing in the courts of the country only by virtue of the legislation by which it was created, and the union of name, of officers, of business, and of property, does not change their distinctive character as separate corporations." Nash*au* Railroad *v.* Lowell Railroad, 136 U. S., 356. So that in the defendant we have
38 two legal entities, one a corporation and citizen of Illinois, the other a corporation and citizen of Missouri. With the former the plaintiff had no dealings and it owed him nothing. The latter became indebted to him in the sum of $81 for wages earned in Missouri, and under the law thereof exempt from attachment, execution, and garnishment, and while it may be difficult to see how this debt due the plaintiff from the Wabash Railroad Company of Missouri could be impounded in the courts of Illinois by the service of garnishment process on the Wabash Railroad Company of Illinois, the ruling of the court of appeals was not based upon the ground that it was not so subject. On the contrary, that court, conceding the fact that the debt was subject to garnishment in the courts of Illinois, held that the laws of that State authorizing the proceeding had not been complied with, and the judgment by reason thereof was void, thus giving that proceeding all the faith and credit it was entitled to in the courts of this State, as was the measure of its duty under the Constitution of the United States; but whether it did so or not, its action in that behalf could not be questioned or reviewed by the circuit court, which brings us to the actual case in hand.

2. The circuit court committed no error in rejecting the evidence of the proceedings in the second attachment suit in Illinois in rendering judgment for the plaintiff or in refusing to modify that judgment. It is true if the judgment of the circuit court had been simply reversed and the cause remanded the case would have stood as though no judgment had ever been rendered, and the parties would have been entitled "to proceed in the court below to obtain a final determination of their rights in the same manner and to the same extent as if the cause had never been decided by any court." Crispen *v.* Hannoran, 86 Mo., loc. cit. But such was not the case. The cause was remanded to the circuit court with directions "to enter judgment for the plaintiff for $81," and the circuit

court had no judicial discretion in the matter. It had no
39 power to enter any other judgment or to consider or determine other matters not included in the duty of entering the judgment as directed. State *ex rel. v.* Edwards, 144 Mo., 467; Rees *v.* McDaniel, 131 Mo., 681; Young *v.* Thrasher, 123 Mo., 308; Stump *v.* Hornback, 109 Mo., 272; Chouteau *v.* Allen, 74 Mo., 56.

3. The court committed no error in issuing execution on the judgment nor in overruling defendant's motion to quash the same. The judgment of the St. Louis court of appeals rendered on the 26th of March, 1895, was a final judgment in the cause. Young *v.* Thrasher, 123 Mo., 308; 1 Black on Judgments, sec. 34, p. 36, and cases, note 64; Mower *v.* Fletcher, 114 U. S., 127; Smith *v.* Adams, 130 U. S., 167.

The entry of that judgment in the circuit court was a purely ministerial act, carrying into execution the judgment of the appellate court of the date and effect as rendered by that court. One of the effects of that judgment was to merge the cause of action, the debt sued for, in the judgment. "It was drowned in the judgment." It thereby "lost its vitality," and "all its power to sustain rights and enforce liabilities terminated in the judgment." Cooksey *v.* Kansas City, &c., R. R. Co., 74 Mo., 477; 1 Freeman on Judgments, § 215; 2 Black on Judgments, § 674. On the 26th of March, 1895, the old debt of the company to the plaintiff ceased to exist, and thereafter could not sustain any liability imposed thereon by the subsequent garnishment proceedings under the second attachment suit in Illinois. 15 Am. & Eng. Encycl., p. 341. But it is contended that the new debt, the judgment debt which took its place, was subject to garnishment. There has been a difference of opinion as to whether a judgment debtor could be held at all as garnishee of the judgment creditor, even in the court in which the judgment was rendered, the courts in some of the States holding one way and in some of them the other. Drake on Attachment, 7th ed., § 622. This learned author, after giving some of the reasons sustaining the affirmative of the proposition, says, § 625: "However strongly these reasons apply to the case of a garnishment of the judgment debts in the same court in which
40 the judgment was rendered, their force is lost when the judgment is in one court and the garnishment in another. There a new question springs up, growing out of the conflict of jurisdiction which at once takes place. Upon what ground can one court assume to nullify in this indirect manner the judgment of another? Clearly the attempt would be absurd, especially when the two courts were of different jurisdictions or existed under different governments." This was the very absurdity which the circuit court was called upon to perpetrate by the motion to quash the execution and the other motions of defendant in the case. In refusing to do so it committed no error, and the judgment is affirmed.

All concur except Marshall and Valliant, JJ., not sitting.

THEO. BRACE, *J.*

And afterwards, to wit, on the 27th day of February, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
v.
WABASH R'Y CO., App.

Comes now the said appellant, by attorney, and files its motion for a rehearing herein.

Which said motion for rehearing is in words and figures as follows, viz:

PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant.

Motion for Rehearing Filed by Appellant.

Now comes the appellant, The Wabash Railroad Company, in the above-entitled cause, by its attorney, and moves the court here to grant it a rehearing therein for the reason that a question decisive of the case and duly submitted by counsel has been overlooked, to wit, the right of Alexander Flannigan, who never was a
41 party to this record, to appear in the courts of Illinois after having obtained service upon the appellant in that State and assert his title in said court to the amount in controversy and to assert his right in the courts of Missouri as well to share in the sum here in dispute as a creditor of Tourville after the case had been remanded, with directions, in the St. Louis court of appeals and before the mandate of said court had been executed by the circuit court of the city of St. Louis, Missouri.

Second. That the decision of this court in this case is in conflict with a controlling decision of the supreme court of Missouri, to wit, the case of Chouteau *vs.* Allen, 74 Missouri, page 59, cited with approval in the present opinion, to which the attention of the court was not called in the argument of this case through the inadvertence of counsel, in which the principle for which appellant here contends, to wit, that said Flannigan, a stranger to this record, had the right to intervene in the courts of Missouri after the reversal of the judgment and before the mandate was entered and claim the fund in dispute or a part thereof, which right has been denied to him and said decision ignored in the present opinion, thereby refusing to give full faith and credit in the courts of this State to the proceedings of a sister State, as required by the Constitution of the United States.

Respectfully submitted.

GEORGE S. GROVER,
Attorney for Appellant.

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

George S. Grover, of lawful age, being duly sworn, on his oath states that he is the attorney of record for appellant in case of Peter

Tourville *v.* Wabash Railroad Company, now pending on motion for rehearing in the supreme court of Missouri.

Affiant further states that on the 22d day February, 1899, upon receipt of the opinion of the supreme court in said cause, he
42 deposited in the post-office, to be forwarded by United States mail, a notice to Virgil Rule, Esq., attorney of record for respondent in said cause, that a motion for rehearing would be filed by defendant, a true copy of which notice is hereto attached to this affidavit, marked Exhibit "A," and made a part hereof.

And further affiant saith not.

GEO. S. GROVER.

Subscribed and sworn to before me this 22d day of February, 1899.

[SEAL.] B. C. WINSTON,
Notary Public, City of St. Louis, Mo.

Commission expires Nov. 2d, 1901.

ST. LOUIS, *Feb. 22d*, 1899.

Virgil Rule, Esq., Fullerton building, city.

DEAR SIR: Please take notice that I will in due time file a motion for rehearing in the supreme court of Missouri in the following case: Peter Tourville *v.* Wabash Railroad Company. I will have motion printed and serve you with copy as soon as completed.

Respectfully, GEO. S. GROVER.

And afterwards, to wit, on the 14th day of March, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
vs.
WABASH R'Y CO., App.

Now, at this day, the court, having fully considered and understood the motions heretofore filed for rehearings herein, doth order that said motions be, and the same are hereby, denied.

43 And on said 14th day of March, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
vs.
WABASH R'Y CO., App.

Now, at this day, there is presented to the Hon. James B. Gantt, chief justice, a writ of error to the Supreme Court of the United States, and a citation directed to the said respondent, citing and admonishing him to be and appear at a Supreme Court of the United States on the 13th day of April, 1899; which said writ of error is allowed, and said citation signed, ordered filed, and made a part of the record herein.

And afterwards, to wit, on the 16th day of March, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
vs.
WABASH R'Y CO., App.

Now, at this day, comes the said appellant, by attorney, and files its assignment of errors to the Supreme Court of the United States in this cause.

Which said assignments of error are in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1898.

PETER TOURVILLE, Defendant in Error,
vs.
WABASH RAILROAD COMPANY, Plaintiff in Error.

Assignment of Error.

Now then comes The Wabash Railroad Company, plaintiff in error in the above-entitled cause, by its attorney, and assigns the following as error therein:

1. Because the judgment of the supreme court of Missouri in said cause is against the law.

44 2. Because said judgment should have been in favor of the plaintiff in error instead of the defendant in error.

3. Because, by affirming the judgment of the court below, the supreme court of Missouri has refused to give full faith and credit to a valid proceeding instituted against the plaintiff in error in a sister State.

4. Because the result of the affirmance of the judgment below by the supreme court of Missouri will be to compel the plaintiff in error to pay the sum therein adjudged to defendant in error, and also to compel the plaintiff in error to pay a like sum on a judgment rendered in Illinois in favor of the defendant in error for the same amount.

5. Because the result of the court's action in this case will be to compel plaintiff in error to pay the same debt to defendant in error twice, once in Missouri and once in Illinois.

6. Because the affirmance of the judgment below is in violation of section 1 of article 4 of the Constitution of the United States.

7. Because the supreme court of Missouri refuses to indulge in the presumption that the proceeding in Illinois was valid, and refused to give any faith or credit thereto.

8. Because upon the whole record the judgment of this court is erroneous.

GEO. S. GROVER,
Attorney for Plaintiff in Error.

And afterwards, to wit, on the 20th day of March, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
vs.
WABASH R'Y CO., App.

Now, at this day, there is presented to Hon. James B. Gantt, in chambers, a supersedeas bond in this cause in the sum of five hundred dollars; which said bond is approved, ordered filed, and made a part of the record herein.

45 Which said bonds is in words and figures as follows, to wit:

Know all men by these presents that we, Wabash Railroad Company, as principal, and W. Nichols, as surety, are held and firmly bound unto Peter Tourville in the full and just sum of five hundred dollars, to be paid to the said Peter Tourville, his heirs, executors, and administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at the October term, A. D. 1898, of the supreme court of the State of Missouri, in a suit depending in said court between Peter Tourville, respondent, and Wabash Railroad Company, appellant, judgment was rendered against the said appellant, and the said appellant having obtained a writ of error of the said court to reverse the judgment *the judgment* in the aforesaid suit, and a citation directed to the said Peter Tourville, respondent as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., not exceeding thirty days from and after the date of the citation in said cause:

Now, the condition of the above obligation is such that if the said Wabash Railroad Company shall prosecute said writ to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

THE WABASH RAILROAD COMPANY, [SEAL.]
By J. RAMSEY, JR. [SEAL.]
W. NICHOLS. [SEAL.]

[SEAL.]

Attest: E. A. LLOYD,
Ass't Secretary.

Sealed and delivered in presence of—
—— ——.

Approved by—
JAMES B. GANTT,
Chief Justice.

46 STATE OF MISSOURI, *set:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript

of the record and proceedings in the case of Peter Tourville *vs.* Wabash Railroad Company as fully and complete as the same appear of record and on file in my said office.

Seal of the Supreme Court of Missouri.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in the city of Jefferson, this 20th day of March, A. D. 1899.

JNO. R. GREEN, *Clerk.*

47 In the Supreme Court of the United States.

WABASH RAILROAD COMPANY, Plaintiff in Error,
vs.
PETER TOURVILLE, Defendant in Error. } No. 765.

Now comes the plaintiff in error in the above-entitled cause and assigns as error therein the following:

First. The first proceedings in East St. Louis in said cause disclosed a substantial compliance with the statutes of Illinois, which is all that is necessary in such cases.

Second. Even if such proceedings were irregular, the judgment was in favor of Peter Tourville, the defendant in error in this cause, and he is therefore estopped from here questioning them.

Third. The payment by plaintiff in error of the first judgment here under consideration is a perfect defense to this action in so far as said judgment diminished the fund in the hands of the stakeholder or garnishee.

Fourth. The legal effect of the appeal to the circuit court of the city of St. Louis from a justice of the peace was to vacate and annul the judgment of the justice of the peace rendered in that city, and the effect of the reversal of the first judgment rendered by the circuit judge in said court was to vacate it also and restore the parties thereto to the same condition in which they were prior to its rendition.

Fifth. In the interval between the reversal of the first judgment in Missouri and the last one here appealed from, or from March 26th, 1895, to May 3rd, 1895, the fund in the hands of the plaintiff in error was duly attached in Illinois on the first day of April, 1895, and therefore that proceeding in Illinois took precedence over the subsequent proceedings in Missouri.

48 And the second judgment in Illinois against the plaintiff in error as garnishee destroyed the right of the defendant in error to recover the same sum from said garnishee, as the Illinois judgment was, under the Constitution and laws of the United States, entitled to full faith and credit in the courts of Missouri.

Sixth. A judgment is always subject to garnishment in any jurisdiction.

Seventh. A void judgment does not bar a subsequent action by the same creditor to recover the same debt from the same debtor.

Eighth. And the first judgment, even if it was valid, not having satisfied the debt, cannot be pleaded in bar by the plaintiff in error to the second attachment proceeding in Illinois.

Ninth. That the circuit court of the city of St. Louis, Missouri, refused to give full faith and credit in the courts of Missouri to the proceedings of a sister State, Illinois, as required by the Constitution of the United States.

Tenth. That the supreme court of Missouri in this action has refused to give full faith and credit in the courts of Missouri to the proceedings of a sister State, Illinois, as required by the Constitution of the United States.

WELLS H. BLODGETT,
GEO. S. GROVER,
Attorneys for Plaintiff in Error.

[Endorsed:] In the Supreme Court of the United States. No. 765. Wabash R. R. Co., pl't'ff in error, *vs.* Peter Tourville, def't in error. Assignment of error.

49 [Endorsed:] File No., 17,350. Supreme Court U. S., October term, 1898. Term No., 765. The Wabash Railroad Co., P. E., *vs.* Peter Tourville. Assignment of errors. Filed Apr. 18, 1899.

Endorsed on cover: File No., 17,350. Missouri supreme court. Term No., 250. The Wabash Railroad Company, plaintiff in error, *vs.* Peter Tourville. Filed April 4th, 1899.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,
vs.
PETER TOURVILLE,
Defendant in Error.
No. 250.

In Error to the Supreme Court of the State of Missouri.

Filed April 4, 1899 (17,350).

STATEMENT.

On the 12th day of March, 1887, plaintiff, then a citizen and resident of the State of Illinois, executed a note to Alexander Flannigan, a lawyer, also living in that State, for the sum of $100, such note bearing interest at the rate of eight per cent. per annum. This note, and accrued interest thereon, amounted, on the 3d day of June, 1891, to the sum of $132, and at that time the only credit upon it was the sum of $15, paid June 7, 1887, by a relative of the plaintiff, leaving the sum of one hundred and seventeen dollars ($117), long past due

and wholly unpaid. In the meantime, the plaintiff had removed to St. Louis, Missouri, and was residing there with his family on said day. The plaintiff in error here, and defendant below, was then, as now, a consolidated railway corporation, duly and separately organized under the laws of the States of Michigan, Ohio, Indiana, Illinois, and Missouri, having business offices and agents upon whom legal process could be served in all of said States. At said time, the defendant in error here, and plaintiff below, was in the employ of the defendant in St. Louis, Missouri, as before stated. On the 3d day of June, 1891, Flannigan instituted attachment proceedings against the plaintiff before a justice of the peace in East St. Louis, Illinois, to collect the debt above described, the suit being returnable on the 27th day of June, 1891.

On the same day a notice of garnishment in aid of said attachment was properly served on the agent of defendant in East St. Louis, Illinois.

It is an admitted fact in this case, that prior to the trial of said suit plaintiff was orally notified of the pendency thereof in time for him to have defended the same, and requested by defendant to defend the same, as was also his attorney, Virgil Rule, Esq.

On the 27th day of June, 1891, an attachment notice, in conformity to the laws of Illinois, was issued by the justice of the peace in East St. Louis, and was published, as the officer's return shows, by posting one notice at the post-office, one at Egler's saloon, and one at the justice's office, on the 29th day of June, 1891. On the 13th day of July, 1891, the case came on for trial, neither the plaintiff, nor defendant, nor the garnishee, appearing. The attachment was sustained,

and a judgment rendered against plaintiff for the sum of one hundred and thirty-two dollars ($132), with a conditional judgment against the garnishee, the defendant here, and the issue of *scire facias*, as required by the Illinois statutes.

On the 23d day of July, 1891, the garnishee, this defendant, filed its answer, stating that it then owed the plaintiff the sum of $71.83, and pleading the exemptions allowed the plaintiff by the laws of Illinois and also of Missouri.

On the 25th day of July, 1891, there was a judgment by default before the justice in favor of *Peter Tourville, the plaintiff in error*, for the use of Alexander Flannigan, against the Wabash Railroad Company, garnishee, in the sum of $21.83, or the balance due to said Tourville from said railroad company after crediting Tourville with the sum of $50, the exemption then allowed to heads of families, resident and non-resident, under the laws of Illinois. From this judgment the garnishee, the defendant here, perfected an appeal to the City Court of East St. Louis, Illinois, where, on the 21st day of December, 1891, after a trial by jury, the same judgment was rendered against it. At the same time the defendant, the garnishee, had a case pending in the Supreme Court of Illinois involving the same issues raised by it in this case. Wabash Railroad Company vs. Dougan, 142 Ill. 248.

Those issues were decided against it, so that there was nothing left for it to do thereafter but to pay the judgment. An execution was issued against the defendant by the clerk of the City Court of East St. Louis for the amount of said judgment and costs, the sum of $43.38, which defendant paid to said officer on the 6th day of January, 1892.

On the 10th day of June, 1891, plaintiff instituted this suit against defendant before a justice of the peace in the city of St. Louis, Missouri, claiming the sum of $81 as due him for wages earned in the defendant's service. There was a judgment by default before the justice against the defendant for the sum of $75, from which the defendant duly appealed to the Circuit Court of the City of St. Louis, Missouri.

A short time after this suit had been instituted, and before any judgment had been rendered in either cause either in Missouri or in Illinois, the defendant tendered to Tourville and his attorney the balance due Tourville as wages after the allowance of his exemptions in the garnishment case in Illinois, or the sum of $21.83, provided the defendant was released as such garnishee in that State.

This tender and offer to pay was refused by Tourville and his attorney, each insisting upon the payment to Tourville by defendant of the full amount of Tourville's wages, notwithstanding the pendency of the garnishment proceedings in East St. Louis.

On the 10th day of June, 1891, Tourville left the defendant's service, and on that day defendant owed him wages as follows:

From May 1 to May 31, 1891, -	$71 83
From June 1 to June 10, 1891, -	10 15
Total, - - - - -	$81 98

On the 23d day of January, 1892, this cause came on for hearing before Hon. James E. Withrow in the Circuit Court of the City of St. Louis, Missouri, upon a stipulation containing the facts hereinbefore recited.

On the 6th day of April, 1892, the court rendered judgment in favor of the plaintiff as follows:

Whole amount of wages, - -	$81 98
Less judgment and costs paid by defendant in East St. Louis, Ill.,	43 38
Judgment against defendant,	$38 60

From this judgment the plaintiff prosecuted a writ of error to the St. Louis Court of Appeals on the ground that the judgment was for the wrong party, while at the same time the defendant perfected an appeal from the taxation of costs against it in the proceeding, claiming that such costs should have been assessed against the fund in its hands as garnishee, as it was the prevailing party in the litigation.

On the 26th day of March, 1895, the judgment of the court below was reversed in the St. Louis Court of Appeals on the ground that the service of notice in the attachment proceeding was defective, and was not in compliance with the statutes of Illinois then in force.

The cause was therefore remanded on said day with directions to the trial court to enter a judgment in favor of plaintiff for $81.

On the 1st day of April, 1895, Alexander Flannigan commenced another attachment proceeding against Peter Tourville before a justice of the peace in St. Clair county to recover the balance due on the debt hereinbefore described. Service was had on the Wabash Railroad Company, as garnishee in Illinois, on the 1st day of April, 1895. This cause was returnable in East St. Louis, Illinois, on the 27th day of April, 1895.

While this second suit in Illinois was still pending

in Illinois, and undetermined, Hon. James E. Withrow, circuit judge in the city of St. Louis, Missouri, on the 3d day of May, 1895, proceeded to enter judgment against the defendant in this cause. On that day the mandate of the St. Louis Court of Appeals was received by said judge.

On that day the defendant offered in evidence a correct transcript of the proceedings in the second attachment suit in Illinois, above described, as well as the garnishment in aid thereof, as far as such suits had then progressed, showing that such actions were then pending in Illinois, and had intervened between the reversal of the judgment in this case and the further proceedings therein before Judge Withrow, on the 3d day of May, 1895.

This evidence was excluded by the court, and defendant duly excepted.

It was admitted that defendant never owed plaintiff any other debt than the $81 in controversy, and that the second attachment proceedings were instituted by the same parties in Illinois who brought the first suit in that State to recover the same debt.

On the 3d day of May, 1895, Judge Withrow entered a judgment against the defendant for the sum of $81. On the same day defendant filed its motion for a new trial, assigning, among other reasons, that the judgment was in violation of section 1 of article 4 of the constitution of the United States.

This motion was overruled by the court on the 10th day of June, 1895, and defendant duly saved its exceptions.

On the 25th day of June, 1895, the defendant filed a motion to modify the judgment in this cause. At-

tached to that motion, and made a part of it, was a transcript, showing a full, complete and perfect compliance with the laws of Illinois in every particular, wherein it appeared that in the second attachment proceedings instituted in Illinois, as above described, Flannigan obtained judgment against Tourville in Illinois on May 15, 1895, for the sum of $139.40, the balance due on the note aforesaid, with accrued interest, and that on the 14th day of June, 1895, a judgment was rendered against the Wabash Railroad Company, as garnishee, in said State, for the sum of $81.98.

On the 11th day of October, 1895, an execution was issued against the defendant on the judgment against it entered by Judge Withrow, in the city of St. Louis, on the 3d day of May, 1895, as aforesaid.

On the 12th day of October, 1895, defendant filed its motion to quash said execution, assigning the same reasons therefor as in its former motions.

On the 4th day of December, 1895, Judge Withrow overruled said motions, and defendant duly excepted.

Thereafter, in due time, the defendant perfected its appeal to the Supreme Court of Missouri.

By consent of counsel it is admitted that the laws of Illinois relating to this subject may be used in this case, with the same effect as if formally offered in evidence.

The cause was submitted to the Supreme Court of Missouri, and argued there at the April term, 1896.

On the 21st day of February, 1899, the judgment was affirmed in the Supreme Court of Missouri, whereupon the plaintiff in error sued out a writ of error in this cause to this court.

The issue now presented in this cause is, as the

court will see, whether or not the judgment against the defendant as garnishee in the second attachment proceeding in Illinois is entitled to and should receive full faith and credit in the courts of Missouri.

If full faith and credit is to be given to such judgment, then its payment in Illinois, by defendant, will be a perfect defense to this action.

That payment must be made by defendant whenever an execution is issued is apparent. If it is, then defendant will inevitably be compelled to pay the judgment in Illinois, and also the judgment in Missouri, upon the same cause of action, and thus pay a part of Tourville's debts, and his wages, too.

Our contention is that a rule which works out such a result is inequitable as well as illegal and unjust.

POINTS AND AUTHORITIES.

I.

The first proceedings in East St. Louis, here under review, disclose a substantial compliance with the statutes of Illinois, and is all that is necessary in such cases.

Secs. 42 to 58 inclusive, C. 11, R. Stat. Ills. 1891, pp. 133, 134, 135, 136;

Secs. 1 to 28 inclusive, C. 62, R. Stat. Ills. 1891, pp. 752 to 758 inclusive.

II.

Even if such proceedings were irregular, the judgment was in the plaintiff's favor, and he is, therefore, estopped from here questioning them.

Herman on Estoppel, Sec. 53, p. 46, and cases cited;

Freeman on Judgments, Sec. 249, and cases cited;

Strong vs. Ins. Co., 62 Mo. 289;

Henry vs. Woods, 77 Mo. 280;

Shelbina Hotel Association vs. Parker, 58 Mo. 327;

Caldwell vs. White, 77 Mo. 471.

III.

The payment by defendant of the first judgment, here under consideration, is a perfect defense to this action.

Stevens vs. Dillman, 86 Ill. 233;

Drake on Attachment, Sec. 699;

Osborne vs. Schutt, 67 Mo. 712;

Homes vs. Corbin, 20 Mo. App. 497;

Minor vs. Roger Coal Co., 25 Mo. App. 78;

Marchildon vs. O'Hara, St. Louis Ct. App., 52 Mo. App. 523.

IV.

The legal effect of the appeal to the Circuit Court in Missouri was to vacate and annul the judgment of the justice of the peace rendered in that State.

Earl vs. Hart, 89 Mo. 268.

And the effect of the reversal of the first judgment, rendered by Judge Withrow, was to vacate it also, and to restore the parties thereto to the same condition in which they were prior to its rendition.

Crispen vs. Hannovan, 86 Mo. 160.

V.

In the interval between the reversal of the first judgment in Missouri and the last one here appealed from, rendered by Judge Withrow, or from March 26, 1895, to May 3, 1895, the fund in defendant's hands was duly attached in Illinois on the first day of April, 1895, and, therefore, that proceeding in Illinois took precedence over the subsequent proceedings in Missouri.

And the second judgment in Illinois against defendant, as garnishee, destroyed plaintiff's right to recover the same sum from defendant in this proceeding, as that judgment was entitled to full faith and credit in the courts of Missouri.

Freeman on Judgments, Sec. 559, and cases cited;
State to use vs. Williamson, 57 Mo. 192;
Turner vs. Johnson, 95 Mo. 431;
Wyeth H. & W. Co. vs. Lang and Co., 127 Mo. 242;
12 Am. and Eng. Enc. Law, p. 148;
Ins. Co. vs. Thompson, 155 Ill. 304;

J. S. Menken Co. vs. Brinkley, 94 Tenn. 721; S. C. 31; S. W. Rep. 92;
Bank vs. Ins. Company, 83 Iowa, 491;
Harvey vs. Great Northern Ry. Co., 50 Minn. 405;
Mills vs. Duryee, 7 Cranch (U. S.), 480;
Wallace vs. McConnell, 13 Peters (U. S.), 136;
McElmoyle vs. Cohen, 13 Peters (U. S.), 312;
Hanley vs. Donoghue, 116 U. S. 4;
Bank vs. Rollins, 99 Mass. 313;
R. R. vs. May, 25 Ohio St. 347;
2 Kent (9th edition), 122, and cases cited;
Drake on Attachment (7th edition), Sec. 700, and cases cited;
Rev. Stat. Mo. 1889, Vol. 1, Sec. 4881, p. 1099;
Starr and Curtis' Annotated Statutes, Illinois, C. 51, Sec. 13, Vol. 1, p. 1081.
C. R. I. & Pac. Ry. vs. Sturm - 174 U. S. 710.

VI.

A judgment is subject to garnishment.

Waples on Garnishment, Sec. 362, and cases cited.

VII.

A void judgment does not bar a subsequent action to recover the same debt.

Freeman on Judgments (3d edition), Sec. 117, and cases cited;
Hope vs. Blair, 105 Mo. 85.

VIII.

And the first judgment, even if it was valid, not having satisfied the debt, cannot be pleaded in bar by defendant to the second attachment proceeding in Illinois.

Waples on Garnishment, Sec. 955, and cases cited;

Drake on Attachment (7th edition), Secs. 707 and 708, and cases cited;

Barton vs. Albright, 26 Ind. 489.

IX.

Rights of the parties which may have accrued subsequent to the rendition of the original judgment, and which were not in issue in the original proceedings in which it was rendered, would not be adjudicated therein.

Chouteau vs. Allen, 74 Mo. 59;

Froyer vs. Wood, 96 Mo. 478;

Freeman on Judgments, Sec. 154, and cases cited;

Young vs. Thrasher, 123 Mo. 312;

Howland vs. Ry., 134 Mo. 474.

Hawkins v. Glass, 108 U.S. 422.

ARGUMENT.

I.

The attachment and garnishment laws of Illinois in evidence provide, as the court will see upon an examination of them, for the institution of just such proceedings as these against non-resident debtors, and the garnishment of their wages in the hands of resident employers. The necessary requisites for such proceedings, such as the notice, the affidavit, the bond, as well as the issue and service of process, are all found in this record.

On account of the non-residence of the judgment debtor, the plaintiff here, the first case, although begun on the 3rd day of June, 1891, was not tried until the 25th of July, 1891, nor finally determined until December 21, 1891, during all of which time the plaintiff, had he chosen to do so, might have appeared and defended the action. That he was personally notified of the pendency of the suit in ample time to have taken all the steps necessary to fully protect his interests, is an admitted fact here. His only excuse for not doing so is so flimsy as to disclose, to any unprejudiced mind, that it is a mere pretense and a sham. For instance, he complains that no notice was mailed to him, as the statutes required should be done when his residence was known, yet he ignores the service of the higher and better form of notice, the direct personal one, which he admits having received. Again, he also complains of the local notice posted up in East St. Louis as not being in the exact technical language of the statute, when it is admitted that a direct personal notice was given to him of the pendency of the suit in

ample time to have permitted him to appear and defend it, had he chosen to do so.

Such a course was, however, the very one which he never had any intention of adopting. The debt was just and long past due, and he knew it.

He had no defense to the action, and never intended to interpose any. But, in lieu of that, acting, doubtlessly, under the advice of able counsel, he remained away after due notice, and threw upon the defendant the burden of a defense which the law imposed upon him, and is now seeking to invoke the technical shadow, and not the real substance, of a directory not a mandatory statute, hoping thus to compel defendant to pay a portion of his debts, and his wages, too.

II.

But even if the statutory provisions were disregarded in part in the first proceeding, how is the plaintiff injured by it?

The judgment of which he complains was, as the record shows, in his own favor.

In such a case, whatever irregularities, if any, existed, were in his interest and not against him, and he is, therefore, estopped from calling them in question.

The rule of law upon this subject is thus stated by the leading text-writers, and has long been settled in the appellate courts of Missouri.

"The purpose of giving notice is not in order to give a ground of action; but if a demand be made which the party indemnifying is bound to pay, and notice be given to him, and he refuses to defend the action, in consequence of which the person indemnified is obliged to pay the demand, that is equivalent to a

judgment, and estops the other party from saying that the defendant in the first action was not bound to pay the money."

Herman on Estoppel, Sec. 53, p. 46, and cases cited.

"After judgment on the merits the parties cannot canvass the same question again in another action, although, perhaps, some objection or argument might have been urged upon the first trial which would have led to a different judgment."

Freeman on Judgments, Sec. 249.

"Where a party to an action, being fully apprised as to his rights, suffers judgment to go against him when he might, by the exercise of reasonable diligence in making his defense, prevent a recovery of the amount claimed, either in whole or in part, he cannot, in a subsequent proceeding at law or in equity, be allowed to reagitate questions which were, or should have been, adjudicated at the former trial."

Shelbina Hotel Ass'n *vs.* Parker, 58 Mo. 327;
Caldwell vs. White, 77 Mo. 471.

"Where one is bound to protect another from liability, he is bound by the result of a litigation to which such other is a party; provided he had notice of the litigation and opportunity to control and manage it."

Strong vs. Ins. Co., 62 Mo. 289;
Henry vs. Woods, 77 Mo. 280.

Applying the rule above cited to this case, it certainly defeats the plaintiff's cause of action, because,

having remained silent when he should have spoken, he cannot now be heard. As was well said in Marchildon vs. O'Hara, *supra*, by Judge Rombauer, the claim of exemptions in a garnishment proceeding is a personal privilege, which the garnishee cannot assert for the debtor. The latter must, under this rule, make that plea himself.

In this case, as the record shows, the plaintiff never interposed any plea of exemptions whatever. Although not required to do so, the defendant did claim these exemptions for the plaintiff, and succeeded in having those guaranteed by the laws of Illinois allowed, thus effecting a saving for him of the sum of fifty dollars.

Not content with that, the plaintiff then turns upon the stakeholder, who never had, and can have, no interest in the matter, and demands that it shall be compelled to pay a judgment in a case which, after due notice of its pendency, he who alone had the right to do so refused to defend, and where, if he had interposed a proper plea, the result might have been otherwise from that now complained of.

To permit a recovery on plaintiff's part in such a case would be as inequitable as it is unjust.

III.

This is not a case where, for the purpose of defrauding plaintiff out of the exemptions given to him by the law of his domicile, and of compelling him to pay an unjust and stale claim, the creditor, himself a resident of the same State with the debtor, has unjustly or fraudulently sent such claim to a foreign jurisdiction, there to be proceeded upon as against a non-resident.

Here the creditor and garnishee are both citizens of

the State of Illinois, the place where the action complained of was commenced.

That the garnishee is a citizen of Illinois as well as of Missouri, has long been settled. In R. R. vs. R. R., 136 U. S., p. 375, Judge Field, speaking for this court, used the following language:

"There are many decisions, both of the Federal and State courts, which established the rule that however closely two corporations of different States may unite their interests, and though even the stockholders of the one may become the stockholders of the other, and their business be conducted by the same directors, *the separate identity of each, as a corporation of the State by which it was created, and as a citizen of that State, is not thereby lost.*"

The defendant, therefore, being a citizen of Illinois, and having an agent there, was personally served with process in this action, and was obliged to respond thereto. That such an action could be maintained against the defendant in the courts of Illinois, even if the attaching creditor had been a citizen of Missouri, was settled in the Dougan case (142 Ill. 242) in Illinois, and in Missouri by the case of Wyeth Co .vs. Lang & Co., 127 Mo. 242.

As before stated, although not obliged to do so, yet the defendant did contend for the Missouri as well as for the Illinois exemptions due to the plaintiff, securing the latter for him, though not the former, and only giving up the fight in his behalf, not its own, when forced to do so by the ruling of the Supreme Court of Illinois upon a like question.

In the meantime what was the plaintiff doing to protect his interest? Did he ever join the defendant in

its persistent, though in part unavailing, defense? Did he ever attempt to prove payment, or want of consideration, as a defense to his note sued on? Not at all. He calmly waited in perfect unconcern, from the 3d of June, 1891, to the 31st day of December, 1891, until the judgment against defendant, *in his favor*, became final, and until January 6, 1892, when defendant was forced to pay it, and now he is here demanding that defendant shall pay his debt, as evidenced by a judgment in his own favor against it, and his wages also, without deducting that judgment and costs from the sum due.

This the learned and upright circuit judge, who heard the cause below, held that he was not entitled to, and in this conclusion, we trust, this court will concur.

IV.

Passing now to the consideration of the suit in Missouri, while the record in that proceeding shows that plaintiff obtained a judgment against the defendant, before a justice of the peace, on the 22d day of June, 1891, yet it also appears that defendant thereafter perfected an appeal from such judgment to the Circuit Court of the City of St. Louis, Missouri. (Abstract, p. 3.)

The rule stated by Judge Black, in Earl vs. Hart, 89 Mo. 268, then applied:

"The conclusion is irresistible from these statutes, and adjudications thereon, that the effect of the appeal is to vacate and set aside the judgment of the justice, save where the appeal, not the suit, is dismissed."

So that, until April 6, 1892 (Abstract, pp. 5 and 6),

there was no judgment in this cause against the defendant in the State of Missouri.

The judgment rendered by Judge Withrow against the defendant, on the 6th of April, 1892, was reversed in the St. Louis Court of Appeals on the 26th day of March, 1895. (Abstract, p. 6.)

The effect of that was, as said by Judge Norton, in Crispen vs. Hannovan, 86 Mo. 168, "to restore the parties to the same condition in which they were prior to the rendition of the judgment. The judgment reversed becomes mere waste paper, and the parties to it are allowed to proceed in the court below to obtain a final determination of their rights in the same manner and to the same extent as if the cause had never been heard or decided by any court.

Neither, in the subsequent prosecution of the cause, can suffer detriment nor receive assistance from the former adjudication.

So that on the 1st day of April, 1895, the second attachment proceeding in Illinois was a prior lien on the fund then in the hands of defendant, and at that time free from the lien of any judgment in the State of Missouri, and, therefore, paramount to any judgment subsequently entered in Missouri.

V.

Section 1 of Article 4 of the Constitution of the United States is as follows:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

In Mills vs. Duryee, 7 Cranch, 483, decided in 1813, Justice Story said:

"This act declares that the record, duly authenticated, shall have such faith and credit as it has in the State court from whence it is taken. If in such court it has the faith and credit of evidence of the highest nature—viz., *record evidence*—it must have the same faith and credit in every other court."

In Wallace vs. McConnell, 13 Peters, 15, decided in 1839, Justice Thompson said:

"If the attachment had been conducted to a conclusion, and the money recovered of the defendant before the commencement of the present suit, there can be no doubt that it might have been set up as a payment upon the note in question. And if the defendant would have been protected *pro tanto* under a recovery had by virtue of the attachment, and could have pleaded such recovery in bar, *the same principle would support a plea in abatement of an attachment suit pending prior to the commencement of the present suit. The attachment of the debt, in such case, in the hands of the defendant, would fix it there in favor of the attaching creditor, and the defendant could not afterwards pay it over to the plaintiff. The attaching creditor would, in such case, acquire a lien upon the debt, binding upon the defendant, and which the courts of all other governments, if they recognize such proceedings at all, could not fail to regard.*"

In McElmoyle vs. Cohen, 13 Peters, 324, decided in 1839, Justice Wayne said: "It must be obvious when the constitution declared that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and pro-

vides that Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof, that the latter clause, as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgments upon the merits, when it is sought to carry them into judgments by suits in the tribunals of another State."

In Hanley vs. Donoghue, 116 U. S. 3, Justice Gray said:

"By the settled construction of these provisions of the constitution and statutes of the United States a judgment of a State court, in a cause within its jurisdiction, and against a defendant lawfully summoned, or against lawfully attached property of an absent defendant, is entitled to as much force and effect against the person summoned or the property attached, when the question is presented for decision in a court of another State, as it has in the State in which it is rendered."

The same rule is laid down in the text-books.

Chancellor Kent thus states it:

"A *lis pendens*, before the tribunals of another jurisdiction, has, in cases of proceedings *in rem*, been held to be a good plea in abatement of a suit. Thus, where a creditor of a bankrupt had *bona fide*, and by regular process, attached in another State a debt to A., and in the hands of B., it has been held that the assignee of the bankrupt could not, by a subsequent suit, recover the debt of B."

2nd Kent, 9th Edition, p. 123.

It is said by Mr. Freeman:

"The Supreme Court of the United States, in a decision which, since its promulgation, has been adopted throughout the Union, declared that the act gave to the record of every judgment, when duly authenticated, and offered in evidence in another State, the same faith and credit to which it was entitled in the State whence it was taken. That if, in such State, it had the faith and credit of evidence of the highest nature—viz., record evidence—then it must have the same faith and credit in every other State."

Freeman on Judgments, 3d Edition, Sec. 559, p. 587.

Judge Drake said:

"In England the doctrine has long been, that where one has been summoned as garnishee, and the defendant in the attachment, before judgment of condemnation of the debt, sues the garnishee for that debt, the latter may plead the attachment in abatement, but not in bar, until judgment be recovered against him. It is no case for an interpleader. * * * The same views have been expressed by the Superior Court of New Hampshire, by the Supreme Courts of Maine, Pennsylvania, South Carolina, Michigan and Iowa, by the Court of Appeals of Maryland, by the Circuit Court of the United States for the Third Circuit, and by the Supreme Court of the United States."

Drake on Attachment, 7th Edition, Sec. 700, pp. 628 and 629.

The statutes of Illinois relating to proof of records is as follows:

"The papers, entries and records of courts may be proved by a copy thereof, certified under the hand of the clerk of the court having the custody thereof, and the seal of the court, or by the judge of the court if there be no clerk."

Ch. 51, Sec. 13, Rev. Stat. Ills., Vol. I., p. 1081.

And section 17 contains a like provision as to proceedings before a justice of the peace.

Section 4881 of the Revised Statutes of Missouri is as follows:

"The records and judicial proceedings of any court of the United States, or of any State, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, and certified by the judge, chief justice, or presiding magistrate of the court, to be attested in due form, shall have such faith and credit given to them in this State as they would have at the place whence the said records come. Copies from the record of proceedings in any court of record of this State, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, or if there be no seal, with the private seal of the clerk, shall be received as evidence of the acts or proceedings of such court of record in any court of this State."

This principle has long been recognized in the appellate courts of Missouri.

In State to use vs. Williamson, 57 Mo. 192, a transcript of a judgment rendered in Virginia was held to be admissible in evidence in Missouri.

In Turner vs. Johnson, 95 Mo. 431, a judgment rendered in Kentucky was admitted in evidence in

Missouri, and was enforced there in accordance with the laws of Kentucky.

In Wyeth Hardware Company vs. Lang & Co., 127 Mo. 242, it was held that debts due a resident of this State by a resident of the State of Kansas may be garnisheed in the latter State, although service on the principal defendant is made by order of publication merely.

From the great number of cases in the United States in which this question has arisen, the following has been selected as persuasive authority:

In Ins. Co. vs. Thompson, 155 Ill. 204, it was held that a judgment of another State against a domestic corporation, upon service made upon one declared by the statute of such State to be an agent of such corporation, will be inforced in Illinois where such corporation has voluntarily transacted business in such other State in such manner as to bring itself within its jurisdiction.

In Menken and Company vs. Brinkley, 94 Tenn. 721–731; S. W. Rep. 92, it was held that a judgment before a justice of the peace of another State falls within the provisions of Sec. 1, Art. 4, of the Constitution of the United States, requiring each State to give full faith and credit to the judicial proceedings of every other State.

The case of Bank vs. Fire Ins. Company, 83 Iowa, 491, was an action on a policy of insurance. The property insured by the policy was destroyed by fire during the life of the contract, and the defendant, therefore, became liable thereon for the full amount insured. On the next day the assured assigned to the plaintiff its claim against defendant for the loss,

and the latter was notified of the loss and the assignment. At the time the plaintiff and the assured were Iowa corporations, and the defendant was a Pennsylvania corporation, having a general agency at Philadelphia, and doing business both in Iowa and in Illinois under a license.

On the 10th of April, 1889, the firm of Glover & Wilcomb, doing business in Chicago, commenced an action in the courts of that State against the assured. The action was aided by attachment, and the defendant was served with a notice of garnishment as a debtor of the assured, and made answer under oath, as required by the laws of Illinois. In its answer it stated the facts in regard to the insurance, the loss, and the assignment to plaintiff. The plaintiff was then required by the Illinois court to interplead, and appeared and filed its plea, and interpleader setting forth its right to ownership of an interest in the subject matter by virtue of the assignment. The plaintiff in the action denied the allegations contained in the garnishee's answer, and the issues thus formed stood for trial in the courts of Illinois when this action was commenced. The Illinois court had competent original jurisdiction, and the proceedings therein had were authorized by the statute of the State of Illinois. A demurrer was sustained to the defendant's answer, and the defendant refusing to plead further, a judgment was rendered in favor of the plaintiff for the amount of its claim. In the Supreme Court of Iowa the judgment below was reversed, on the following ground:

Held, upon demurrer to an answer by A., everything in the nature of a plea in abatement, that the laws of Illinois being presumed to be the same as those of this

State, in the absence of a showing to the contrary, A. was liable to a suit upon the claim of D. in the courts of Illinois in all respects as a resident corporation of that State would be, and likewise to garnishment therefor, and, therefore, the Illinois court, by its process of garnishment, and the appearance of G. therein, had acquired jurisdiction of the claim in controversy. For that reason the cause was remanded for trial to the court below.

In Harvey vs. Great Northern Ry., 50 Minn. 405, the defendant was, on November 23, 1891, indebted to one Zeller, a freight train conductor on its railroad in Montana, $95.25 for services.

Zeller was at the same time indebted to Truscott, of Montana, in the sum of $79.50.

On that da Truscott commenced an action against Zeller before a justice of the peace in Montana to recover this debt, and attached Zeller's claim against the Great Northern Railway Company.

On December 4, 1891, Zeller assigned his claim to plaintiff Harvey, who brought this action against the railway company to recover the money.

The defendant answered, setting up the Montana attachment suit above described as a bar. The plaintiff had judgment, and the defendant appealed. The judgment was reversed and the cause remanded, with directions to the court below to set aside the judgment and continue the cause until the final determination of the attachment proceedings in Montana.

The Supreme Court of Minnesota there held that the pendency of a prior action by attachment in Montana, which binds the debt, might be set up by way of defense to a suit by the defendant in the attachment in Minnesota to recover the same debt.

This is the identical question now before this court in this cause.

Here the Illinois attachment suit, instituted April 1, 1895, is necessarily prior in time as well as in right to the subsequent judgment entered by Judge Withrow on the 3d day of May, 1895, in this action, and therefore the entry of the last named judgment should have either been postponed by Judge Withrow until after the attachment suit in Illinois was finally determined or modified after the rendition of judgment against defendant, as garnishee, in that State, so as to prevent the collection of the judgment in Illinois and the judgment in Missouri, too, thus requiring the defendant to pay plaintiff's debt twice.

For, as the court will see from the record, this cause originated before a justice of the peace, where formal pleadings are not required.

The evidence offered by defendant in Missouri on the 3d day of May, 1895, as to the pending suit in Illinois, attaching the same debt here in controversy, was in the nature of a plea in abatement.

The subsequent motions to modify this judgment and recall the execution were virtually pleas in bar.

True, Judge Withrow was obliged to obey the mandate of the Court of Appeals, and it was unquestionably his duty to do so.

But, between the time when the first judgment in this case was reversed, or on March 26, 1895, and May 3d, 1895, a new state of affairs presented itself to him.

On the 1st day of April, 1895, a perfectly valid attachment suit was instituted in Illinois in which the defendant was made a garnishee, and due service was had upon it as such in that State.

By this means the debt due to the plaintiff from the defendant, which had been fixed at the sum of $81 by the decision of the Court of Appeals, was sequestered, so that instead of paying it to the plaintiff in Missouri, upon the judgment to be rendered here, it was thereby impounded for the plaintiff's benefit in the courts of Illinois.

This worked neither injustice or hardship, so far as the plaintiff was concerned, for his debt to Flannigan, in Illinois, was long overdue, and never questioned, and it far exceeded the sum due from defendant to him.

So, whether the Illinois attachment was prior in time, or not, it certainly was in right, and, therefore, full faith and credit should have been given to it by Judge Withrow here.

But, by ignoring that proceeding, as Judge Withrow did, the mandatory provisions of the constitution of the United States, the statutes of Missouri, as well as the settled rules of law in that State, were all openly violated, and thus the defendant is confronted with two judgments against it, one in Illinois, and the other in Missouri, for the same debt.

This should not be, and would not have been, if the learned judge below had obeyed the requirement of the laws above cited. The amount involved in this controversy is not large, but the principle is important, and, therefore, we ask for a reversal of the judgment below, with directions to Judge Withrow to sustain the defendant's motion, in order that it may, when the Illinois judgment against it is paid, as it soon must be, obtain full faith and credit therefor in the courts of Missouri, and that this judgment may be satisfied and

discharged by the appropriation of the sum due plaintiff here to the payment in part of his long-standing, just, and unquestioned debt in Illinois.

VI.

The learned counsel for plaintiff will, no doubt, contend here, as he did below, that the judgment in Missouri is not subject to garnishment in Illinois.

The opposite rule is thus stated by Mr. Waples:

"When judgment has been rendered, there is no impediment to its being reached by garnishment in a suit against the judgment plaintiff.

"Even alimony adjudged to the wife against her divorced husband may be thus reached in a suit against her."

Waples on Garnishment, Sec. 362, p. 262, and cases cited.

Besides, under the laws of Illinois, the money due to plaintiff from defendant, thus reduced to judgment in Missouri, became thereafter a part of the personal estate of the plaintiff in the defendant's hands, which the defendant was bound to disclose in its answer, and it was thereafter subject to garnishment in that State, notwithstanding the fact that the plaintiff was a non-resident of Illinois, and that the wages were earned in Missouri.

Ch. 62, Sec. 5, Rev. Stat. Ill., Vol. I., p. 1221; Wabash Railroad vs. Dougan, 142 Ill. 248.

The garnishment law of Missouri is substantially the same.

Sec. 5221, Rev. Stat. Mo., 1889, Vol. II., p. 1265.

And the Supreme Court of Missouri has virtually adopted the Illinois rule.

Wyeth Hardware Company vs. Lang & Co., 127 Mo. 242.

Therefore the judgment in plaintiff's favor, against the defendant, in Missouri, was not only subject to garnishment in Illinois, but also properly appropriated to the payment of plaintiff's debt to Flannigan there, by that proceeding.

VII.

It was contended below, and doubtless will be here, by the learned counsel for the plaintiff, that the second attachment proceeding could not lawfully be prosecuted by Flannigan in Illinois, because he had already recovered a judgment there in a prior action for the same debt.

But, one answer to that contention is that the first judgment in Illinois was reviewed by the St Louis Court of Appeals, and there held to be void.

A void judgment is not a bar, and, therefore, cannot be used as such to defeat a subsequent action.

This rule is thus laid down by Mr. Freeman:

"A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. *It neither binds nor bars any one.* All acts performed under it, and all claims flowing out of it, are void."

Freeman on Judgments, 3d Edition, Sec. 117, and cases cited.

The Supreme Court of Missouri adopted the above view in Hope vs. Blair, 105 Mo. 85.

The first judgment in Illinois, if void, was, therefore, no protection to the defendant, and could not be invoked by it, or by the plaintiff, as a bar to the second suit, by the same creditor, in that State.

VIII.

Our contention here, however, is, as it was in the court below, as well as in the Court of Appeals, that the first judgment obtained against defendant, in Illinois, by the plaintiff, to the use of Flannigan, was valid.

Treating such judgment, therefore, as valid, we contend that, as it did not satisfy the debt, it could not have been pleaded either in abatement or in bar, by defendant, to the second attachment proceeding in Illinois.

The rule for which we here contend is thus laid down by Mr. Waples:

"It is no payment, that can pleaded in bar of a subsequent suit, when the garnishee has merely credited the garnisheer upon his books, and debited the attachment creditor the same amount, after he has been charged in a garnishment proceeding."

Waples on Garnishment, Sec. 955, p. 647.

It is thus stated by Mr. Drake:

"Nor does this judgment against the garnishee amount to *res adjudicata* as between him and the defendant, so as to preclude the latter from claiming more in his action than the garnishee was considered in the attachment proceedings to owe."

Drake on Attachment, Sec. 707 (7th Edition), and cases cited.

It is thus declared by the Supreme Court of Indiana:

"The judgment against the garnishee in an attachment proceeding is not conclusive as to the amount owing by the garnishee to the attachment defendant. In a suit by the latter for the debt, the judgment on the garnishee process is not a bar, but is a good credit to the amount paid."

Barton vs. Albright, 29 Ind. 489.

And so it is in this action. Stating the account between Flannigan and Tourville, after the collection from defendant of both judgments in the two attachment and garnishment proceedings in Illinois, how would it stand?

Tourville owed Flannigan, on the 3rd day of June, 1891 (Abstract, page 2)	$132.00
Tourville collected from defendant, as garnishee for Flannigan, in the first proceeding	21.83
Balance still due Flannigan from Tourville after payment of first judgment,	$110.17
Flannigan has a valid judgment against defendant, as garnishee, in the second proceeding, of	81.98
Balance still due to Flannigan from Tourville after both judgments have been paid by defendant	$28.19

Referring now to the state of the account between Tourville and defendant, how would it stand after the payment by defendant of all the judgments against it, in both States, Illinois and Missouri, on Tourville's account?

THUS:

Whole amount due Tourville from defendant as wages (Abstract, page 51).....	$ 81.98
First judgment in Illinois, exclusive of costs (Abstract, page 51).....	21.83
Second judgment in Illinois, exclusive of costs (Abstract, page 28).....	81.98
Judgment in Missouri, exclusive of costs: (Abstract, page 31).....	81.00
	$184.81
	81.98
Excess of judgments over wages due to Tourville by defendant.....	$102.83

The unfortunate defendant, a mere stakeholder, therefore, will, if the judgment below is permitted to stand, not only be compelled to pay to Tourville the sum originally due him as wages, but also contribute for the benefit of that individual the sum of $102.83, on account of Tourville's debt to Flannigan, which Tourville has never either contested or ventured to dispute.

A rule of either law or equity which works out such a result as the above is abhorrent alike to reason and to justice.

IX.

The Supreme Court of Missouri, however, held in this case that Circuit Judge Withrow's action in excluding all evidence of the pending suit in Illinois was proper, because the first judgment had been reversed and remanded with directions to enter up a new judgment for a specific sum, and also because all prior pro-

ceedings were necessarily merged in the new judgment.

But in reaching that conclusion that learned court overlooked the fact that Flannigan, the creditor, was never a party to this suit, and was, instead, a stranger to this record, and therefore his rights could not be affected in any manner by such new judgment. Mr. Freeman thus states the correct rule on this subject:

"It is a general rule that an adjudication *takes effect only between the parties to the judgment, and that it gives no rights to or against third parties.*"

Freeman on Judgments (3d Edition), Sec. 154, and cases cited.

In Chouteau vs. Allen, 74 Mo. 59, after the reversal of the judgment in the Supreme Court of Missouri with specific directions, the holder of one of the bonds in controversy, who was not a party to the record, was permitted by the court below at the new trial to come in and assert his title to said bonds and to share in the proceeds of the general fund.

No objection was made to this in the lower court, but it was assigned as one of the errors on the second appeal. But the Supreme Court said: "No objection was made by either party to his coming in, *and we discover none, as he was a stranger to the record, and therefore not concluded by our appellate action.*"

In Young vs. Thrasher, 123 Mo. 312, the Supreme Court of Missouri, speaking through Judge Macfarlane, again said: "*Rights of the parties which may have accrued subsequent to the rendition of the original judgment, and which were not in issue in the proceedings in which it was rendered, would not be adjudicated therein.*"

In Howland vs. Ry., 134 Mo. 476, the plaintiff sued the defendant railway on the 31st day of duly, 1894, for $31.20 for work and labor on the road, or for his unpaid wages earned in June and July, 1894. The plaintiff was the head of a family and a resident of Missouri, and the wages sued for were earned in Missouri.

The defendant was a corporation, organized as such in Illinois and Iowa, operating a line of railway in Illinois, Iowa and Missouri, having agents upon whom process could be served in each of said States. A creditor of the plaintiff living in Missouri brought suit against him by attachment, in Iowa, and garnished the defendant in that State. The defendant filed an answer in the Iowa garnishment case, admitting its indebtedness to the plaintiff in the sum of $31.20, and pleading his exemptions. Such exemptions were also duly claimed by the plaintiff in the Iowa court by affidavit.

No service was had upon the plaintiff in Iowa, nor did he ever enter his personal appearance there in that proceeding.

The court in Missouri, however, entered up against the defendant for the full amount sued for, and refused to recognize or give any faith or credit to the Iowa proceeding then pending.

Upon appeal, this ruling was reversed in the Supreme Court of Missouri, with directions to the court below to grant a stay of execution in the Missouri case until final judgment was rendered in Iowa, in order to protect the garnishee and prevent the collection from it of the same debt by the employe, and again by his creditor.

This is the exact situation in the case at bar, as h
"history has repeated itself."

All the plaintiff in error has ever asked in t
case is just what was given to the Rock Island Ra
way Company in a case almost exactly like this one
its facts by the Supreme Court of Missouri.

Why there should be a different rule applied to t
case is difficult to perceive, either upon principle
authority, as the effect of Judge Withrow's ruling
affirmed in this court, will be to annul a plain a
mandatory provision of the constitution of the Unit
States, as well as to compel the defendant, an innoc
stakeholder, to pay the plaintiff's wages and a la
portion of his debts, too.

For that reason we ask for a reversal of this ju
ment with proper and specific directions to the cou
of Missouri to give full faith and credit in this case
the judgment rendered against this garnishee in Illino

Respectfully submitted,

WELLS H. BLODGETT,
GEORGE S. GROVER,
Attorneys for Plaintiff in Err

Supreme Court of the United States

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

PETER TOWNSVILLE,
Defendant in Error.

In Error to the Supreme Court of Missouri.

Supplemental Brief of Plaintiff in Error.

WELLS H. BLODGETT,
GEO. S. GROVER,
Attorneys for Plaintiff in Error.

5959

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

PETER TOURVILLE,
Defendant in Error.

No. 250.

In Error to the Supreme Court of Missouri.

FILED APRIL 4, 1899. (17350.)

SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR.

I.

Since the filing of our original brief in this cause, the 174th volume of the reported decisions of this court has been published, and in it appears the case of Chicago, Rock Island and Pacific Railway Company vs. Sturm, submitted April 5, 1899, and decided May 22, 1899 (174 U. S. 710), which, we respectfully submit, is decisive of the present controversy.

In that case, Sturm sued the railway company in a justice court in Kansas for wages due, and recovered the full amount claimed.

The company appealed to the County District Court.

When the case was called there for trial, the company moved for a continuance on the ground that a creditor of Sturm had sued it in a court in Iowa, of which State the railway company was also a corporation, and had garnisheed the company there for the wages sought to be recovered in this suit, and had recovered a judgment there from which an appeal had been taken which was still pending.

The motion for continuance was denied, the case proceeded to trial, and judgment was rendered for Sturm for the amount sued for, with costs.

A new trial was moved for, on the ground, among others, that the decision was contrary to and in conflict with section 1, article IV., of the Constitution of the United States.

The motion was denied, and the judgment was sustained by the Court of Appeals and by the Supreme Court of the State. The case was then brought to this court.

In reversing the judgment of the Supreme Court of Kansas, and in remanding the cause, Mr. Justice McKenna, speaking for this court, said:

"There are cases for and cases against the proposition that it is the duty of a garnishee to notify the defendant, his creditor, of the pendency of the proceedings, or he will be precluded from claiming the proceedings in defense of an action against himself. We need not comment on the cases or reconcile them, *as such notice*

was given and the defense made. The plaintiff did all it could and submitted only to the demands of the law.

* * * * * * *

"It follows from these views that the Iowa court had jurisdiction, and that the Kansas courts did not give to the proceedings in Iowa the faith and credit they had there, and were hence entitled to in Kansas."

In the case at bar Tourville sued the railway company in a justice's court in Missouri for wages due, and recovered for the full amount claimed. The company appealed to the Circuit Court.

At the first trial the circuit judge deducted from the wages the amount of a judgment in Illinois against the railway company in a garnishment proceeding there, in which the judgment was in favor of Tourville to the use of one of his Illinois creditors. It was admitted that the company gave to Tourville and his attorney due notice of the Illinois garnishment, prior to judgment, and in ample time to have defended against it, and that no attention was paid to such notice, and no defense ever made in Illinois by either Tourville or his attorney. It was further admitted that the railway company plead the Missouri exemptions of Tourville in the Illinois proceeding, and that such exemptions were not allowed in the Illinois courts.

It was also admitted that prior to the suit for wages in Missouri, by Tourville, that the railway company offered to pay such wages less the amount of the judgment in Illinois, in the garnishment proceeding, which it had been compelled to pay on an execution, and that such offer was refused by both Tourville and his attorney.

Tourville perfected an appeal in the cause to the

St. Louis Court of Appeals. There, on the 26th day of March, 1895, the judgment of the Circuit Court was reversed, on the ground that the service of notice in the Illinois proceeding was not in conformity to the statutes of that State, and the cause remanded with directions to the Circuit Court to enter a judgment for the full amount of the wages sued for.

On the 1st of April, 1895, another garnishment proceeding was commenced in Illinois against Tourville and the railway company to recover the balance of the same debt.

While this second suit in Illinois was still pending the Circuit Court in Missouri, on the 3d day of May, 1895, entered up a judgment against the railway company for the full amount of the wages in dispute, and refused to take cognizance in any form, of the proceedings then pending in Illinois.

The railway company, by various appropriate motions, sought a stay of the proceedings in Missouri until the garnishment case in Illinois could be completed, assigning among other reasons that the judgment of the Circuit Court was in violation of section 1 of article IV. of the Constitution of the United States. During the pendency of the various motions in the Missouri case the Illinois garnishment had progressed until a final judgment had there been rendered against the railway company as garnishee for the full amount of the wages due to Tourville.

Although constantly and promptly advised by the railway company of every step taken in the Illinois proceedings, including the final judgment, the Circuit Court in Missouri refused to recognize them in any form whatever, and, disregarding them *in toto*, rendered

a judgment against the company and in favor of Tourville for the full amount of the wages due, thus leaving the unfortunate stakeholder to pay Tourville's wages and his debts also.

This ruling was affirmed in the Supreme Court of Missouri, and the railway company brought the case here. We are here, therefore, contending for the application of the rule so clearly announced by this court in the Sturm case, *supra*, upon almost precisely the same ultimate facts.

Here, as in the Sturm case, *supra*, the courts of one State have refused, in violation of a plain constitutional provision, to give full faith and credit to the proceedings of a sister State. And here also, if the judgment of the Supreme Court of Missouri is permitted to stand, the unfortunate plaintiff in error will be compelled to pay the wages of Tourville, as well as his debts also, without having the slightest interest in the latter controversy.

For, as before stated, as the court will see upon an examination of the records before it, in the Sturm case *supra*, that Sturm, an employé of the Rock Island Railway Company, sued that company before a justice of the peace in the State of Kansas for the sum of $140.00 wages due.

There was a judgment in the plaintiff's favor before the justice, from which the company appealed to the District Court of Republic County, Kansas. When the case was called for trial in that court the company moved for a continuance on the ground that a garnishment proceeding was then pending against it in Pottawattomie county, Iowa, where it also resided, and could be served with process, to recover a part of the

same wages then due to said Sturm, for which he had sued in Kansas.

The District Court of Kansas overruled the motion, and entered a judgment against the company for the full amount of wages due to Sturm.

Upon appeal the judgment below was affirmed both in the Court of Appeals and in the Supreme Court of Kansas.

The case then came here on a writ of error from the Supreme Court of Kansas. The sole issue raised was the refusal of the courts of Kansas, *nisi prius* and appellate, to give full faith and credit to the proceedings of a sister State, Iowa, as required by the Constitution of the United States.

For this error the judgment of the Supreme Court of Kansas was reversed in this court and the cause remanded, this court holding that "the Iowa court had jurisdiction, and that the Kansas courts did not give to the proceedings in Iowa the faith and credit they had there, and were hence entitled to in Kansas."

In the case at bar, Tourville, an employé of the Wabash Railroad Company, sued that company before a justice of the peace in Missouri for his wages, amounting to $81.98.

There was a judgment in the plaintiff's favor before the justice in Missouri, from which the company appealed to the Circuit Court of the City of St. Louis, Missouri.

When the case was called for the last trial, in that court, the company by various appropriate and timely motions, in strict conformity to the Missouri code of pleading and practice, prayed for a stay of the proceedings in the Missouri court on the ground that a

garnishment suit was then pending against it in St. Clair county, Illinois, where it also resided, and was incorporated, and could be served with process, to recover precisely the same wages then due to Tourville for which he had sued in Missouri.

The Circuit Court of the City of St. Louis, Missouri, overruled the motion and entered a judgment against the company for the full amount of wages due to Tourville.

Upon appeal, the judgment below was affirmed in the Supreme Court of Missouri.

The case is now here on a writ of error from the Supreme Court of Missouri.

Here, as in the Sturm case *supra*, the sole issue raised is the refusal of the courts of Missouri, *nisi prius* and appellate, to give full faith and credit to the proceedings of a sister State, Illinois, as recognized by the Constitution of the United States.

The facts in the two cases, so far as that issue is concerned, are exactly the same, and upon principle the Sturm case is, of necessity, a controlling authority here. And it should be so, because in that case, as in this one, it was *not* a contest between two attaching creditors in sister States, nor is there any question of priority raised as between two such conflicting claims, nor is there any conflict between two jurisdictions as to which one shall be paramount: but it *is* a question whether a valid proceeding then pending in Illinois, in a case where the courts of that State had ample jurisdiction, can be ignored and disregarded in the courts of Missouri, so as to compel the plaintiff in error here, a mere stakeholder, to pay not only the wages of one of its employés, but his debts also.

This result can be avoided in the case at bar by an application to it of the principle announced by this court in the Sturm case; and that principle, besides being a mandatory part of the organic law of the land, is so just and fair as to commend itself to every fair-minded man.

For the reasons so well stated by this court in the Sturm case we, therefore, ask that the judgment of the Supreme Court of Missouri, in the case at bar, be reversed, with directions to that court to permit the plaintiff in error to introduce proof of the final judgment against it in Illinois, with the further direction to give full faith and credit in the courts of Missouri to the judgment of that sister State.

Respectfully submitted,

WELLS H. BLODGETT,
GEO. S. GROVER,
Attorneys for Plaintiff in Error

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1900.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,

vs.

PETER TOURVILLE,
Defendant in Error.

No. 250.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED APRIL 4, 1899 (17,353).

STATEMENT.

This is a suit against the Wabash Railroad Company (of Missouri) for $81, due plaintiff for wages earned, "UNDER A CONTRACT MADE IN SAID STATE (MISSOURI), UNDER WHICH SAID CONTRACT SAID WAGES WERE PAYABLE IN THE CITY OF ST. LOUIS, MISSOURI, AND NOT ELSEWHERE. (Trans., p. 5.)

Plaintiff is the head of a family, residing with the same, in the State of Missouri, and has no property, excepting his wearing apparel; therefore, under the laws of Missouri, the wages here sued for are exempt from attachment, execution or garnishment.

(Trans., p. 4, Rev. Stat. Mo. 1899, Secs. 3158, 3159, 3435.) And, under the laws of Illinois, in force at the time the Second Garnishment Proceedings hereinafter described were instituted, said wages due a citizen of Missouri were also exempt from garnishment in Illinois. (Laws Ill. 1891, p. 141, Sec. 3, in evidence. Starr & Curt, Ill. Stat., Chap. 52, par. 22.)

The Wabash Railroad Co. is a consolidated Railway Corporation SEPARATELY ORGANIZED under the laws of Illinois and Missouri. (Trans., p. 4.)

This suit was begun before a Justice of the Peace, at St. Louis, Missouri, **June 10, 1891.** The defendant made default in the Justice's Court, and thereafter took an appeal to the Circuit Court.

On June 3, 1891, one Flannigan, a resident of Illinois, instituted a suit against plaintiff, by attachment, and on the same day the Wabash R. Co. (of Illinois) was served with notice of garnishment (Trans., p. 4) (which suit will be hereinafter designated as the First Garnishment Proceedings). Flannigan obtained judgment, under the First Garnishment Proceedings, against said garnishee for the amount of wages due plaintiff from the Wabash R. Co. (of Missouri), less $50 exemptions allowed the head of a family under the laws of Illinois; and this judgment was paid under execution by the Wabash R. Co. (of Illinois).

On January 6, 1892, when this case came on for trial in the St. Louis Circuit Court, it was submitted on an agreed statement of facts, set forth in the proceedings. (Trans., pp. 4 and 5.) The defendant, the Wabash R. Co. (of Missouri) interposed the judgment in the First Garnishment Proceedings as a defense, in part to plaintiff's action, and the Circuit Court allowed the same as a credit on plaintiff's demand. Both parties appealed to the St. Louis Court of Appeals. Where, on **March 26, 1895,** the judgment was reversed and the cause remanded "WITH DI-

RECTIONS TO THE CIRCUIT COURT TO ENTER JUDGMENT FOR PLAINTIFF FOR $81, THE AMOUNT SUED FOR."

THIS JUDGMENT OF THE ST. LOUIS COURT OF APPEALS WAS A FINAL JUDGMENT AND WAS NOT APPEALED FROM.

Afterward, on April 1, 1895, Flannigan, in the State of Illinois, instituted a Second Garnishment Proceedings before the same Justice of the Peace, and the Wabash R. Co. (of Illinois) was again served with notice of garnishment. **The debt sought to be impounded by the Second Garnishment Proceedings is the same debt impounded by the First Garnishment Proceedings (Trans., p. 12) and on execution under the judgment in those proceedings paid by the Wabash R. Co. (of Illinois) to Flannigan.**

Under the laws of Illinois a garnishee is required to appear and defend the garnishment proceedings. (Trans., p. 6.)

The garnishee in Illinois, the Wabash R. Co. (of Illinois), although it had paid the judgment in the First Garnishment Proceedings impounding the same debt in the same court, filed an answer in the Second Garnishment Proceedings admitting the indebtedness. and when the cause was called for trial, instead of defending as required to do by the laws of Illinois, made default, and judgment was rendered against it on its answer. It does not appear that this judgment has ever been collected or any attempt made to collect it. So that the inference is that the failure of the garnishee to defend the Second Garnishment Proceedings, and its failure to show in evidence the payment of the same debt to that plaintiff under the judgment obtained in the same court in the First Garnishment Proceedings was a prearranged plan between Flannigan and the garnishee, designed to allow the former to obtain judgment against the garnishee in Illinois with which to try and defeat the judgment in this case.

The Justice of the Peace, in Illinois, before whom the Second Garnishment Proceedings were had, has jurisdiction only in St. Clair County, Illinois, and the Constable under him has jurisdiction in serving process only in said St. Clair County. The Constable's return on the notice of garnishment is, "executed the within notice by posting one notice at M. Joyce's store, and one notice at the Workingman's Bank and one notice at the Justice's office." etc.

Nowhere in the Constable's return does it appear that these notices were posted in St. Clair County, Illinois. (Trans., p. 17.)

During the pendency of the Second Garnishment Proceedings in Illinois, the mandate of the St. Louis Court of Appeals in this case reached the Circuit Court, and on **May 3, 1895**, the Circuit Court entered judgment for the plaintiff for $81, as directed so to do by the judgment of the St. Louis Court of Appeals. (See Proceedings, Trans., pp. 10, 12.)

From this judgment the Wabash R. Co. (of Missouri) duly prosecuted its appeal to the Supreme Court of Missouri, and the case has been brought here upon writ of error.

The statement in the Supplemental Brief of plaintiff in error, on page 6 thereof, in regard to the "last trial" and prayer "for a stay of the proceedings in the Missouri Court" may be misleading, inasmuch as there was no "last trial" or "prayer" for a stay of the proceedings in the Missouri Court. When the mandate of the St. Louis Court of Appeals reached the St. Louis Circuit Court, and that Court was about to enter the judgment directed to be entered by the mandate of the Appellate Court, the defendant offered in evidence the affidavit, Attachment Bond and Writ of Attachment with the service thereon, in the Second Garnishment Proceedings, and the Circuit Court sustained plaintiff's objection to the introduction of

these papers in evidence (Trans., pp. 10, 12), and performed the purely ministerial act of entering the judgment directed by the Appellate Court.

We refer this Court to the statement of the case in the opinion of the Supreme Court of Missouri (Trans., pp. 25, 26), and in addition thereto direct the Court's particular attention to the following facts

This case was begun in Missouri nearly five years before the Second Garnishment Proceedings in Illinois were commenced.

The judgment of the St. Louis Court of Appeals in this case was rendered in Missouri four days before the Second Garnishment Proceedings in Illinois were commenced.

Under the contract sued on in this case plaintiff's wages were payable in the City of St. Louis, Missouri, and not elsewhere.

The judgment of the St. Louis Court of Appeals has not been appealed from.

Plaintiff is the head of a family residing in the State of Missouri. The wages here sued for are, under the laws of Missouri, exempt and not subject to garnishment. And, under the laws of Illinois, in force at the time the Second Garnishment Proceedings were commenced as a resident of Missouri, in Illinois plaintiff was entitled to the same exemptions.

If the garnishee had appeared and defended the Second Garnishment Proceedings as required to do under the laws of Illinois, the Illinois statute or any of the jurisdictional facts herein set forth would have been a complete defense.

POINTS AND AUTHORITIES.

I.

(*a*) **A judgment of a superior court remanding a case to an inferior court for entry of judgment, and leaving no judicial discretion to the latter as to further proceedings, is final. Therefore the judgment of the St. Louis Court of Appeals is** *res adjudicata.*

Smith v. Adams, 130 U. S. 167-177;
Winthrop v. Meeker, 119 U. S. 180.

Dainese v. Kendall, 119 U. S. 53-55. (**Citing**, Bostwick v. Brinkerhoff, 106 U. S. 3; Grant v. Phoenix Ins. Co. 106 U. S. 429, 431; St. Louis, etc., R. Co. v. Southern Exp. Co. 108 U. S. 24, 28; *Ex Parte* Norton, 108 U. S. 237, 242; Mower v. Fletcher, 114 U. S. 127.)

Bostwick v. Brinkerhoff, 106 U. S. 3. (**Citing** Whiting v. Bank, 13 Pet. 6, 15; Forgay v. Conrad, 6 How. 204; Craighead v. Wilson, 18 How. 199, 201; Beebe v. Russel, 19 How. 283; Branson v. R. R. Co. 2 Black 524; Thomson v. Dean, 7 Wall. 342; St. Clair Co. v. Lovingston, 18 Wall. 628; R. R. Co. v. Swasey, 23 Wall. 405, 409; Crosby v. Buchnan, 23 Wall. 420, 453; Comrs. v. Lucas, 93 U. S. 108, 113; Parcels v. Johnson, 20 Wall. 654.)

Talley v. Curtain, 58 F. R. 5;
Merrian v. Chgo., etc., R. Co. 64 F. R. 535, 547;
1 Black on Judgments, p. 34;
McKinney v. Harrel, 36 Mo. App. 337;
Teichman v. Amer. Bank, 35 Mo. App. 472;
Belch v. Miller, 37 Mo. App. 628;
Lane v. Chicago, etc., R. Co. 35 Mo. App. 567;
Crecelius v. Bierman, 68 Mo. App. 34;
Southwest Lead Co. v. Phoenix Co., 41 Mo. App. 406;
Gibbons v. Ogden, 19 U. S. 448.

(*b*) **Said judgment being final, the Circuit Court had no power to reopen the case and hear the evidence offered by defendant; or to adjudicate the rights of defendant which accrued pending the**

appeal, or to consider or determine matters not included in the duty of entering the judgment as directed.

Young v. Thrasher, 123 Mo. 312;
State *ex. rel.* v. Edwards, 144 Mo. 467;
Rees v. McDaniel, 131 Mo. 681;
Stump v. Hornback, 109 Mo. 272.

II.

The Second Garnishment Proceedings in Illinois are void for want of jurisdiction.

(*a*) **Constructive service can confer no jurisdiction unless the requirements of the statute have been strictly complied with, and the record must show affirmatively that jurisdiction of defendant has been properly acquired.**

Thormeyer v. Sisson, 83 Ill. 188;
Haywood v. Collins, 60 Ill. 328;
R. S. Ill. (Starr & C. Ed.) 1896, Ch. LI., Secs. 50-53. p. 473;
Hinman v. Andrews Opera Co., 49 Ill. App. 135;
People v. Jarrett, 7 Ill. App. 566;
Evans v. Pierce, 3 Ill. 469, followed in Bines v. Proctor, 5 Ill. 174, cited in Nelson v. Rockwell, 14 Ill. 377;
Baldwin v. Ferguson, 35 Ill. App. 394.
See also *post* III.

(*b*) **The record of the Second Gainishment Proceedings failing to show proper service on Tourville, tbe presumption is conclusive that the judgment is void.**

1 Wade on Attach., Sec. 47;
Morrow v. Weed, 4 Iowa, 77;
Tift v. Griffin, 5 Ga. 185;
Chemung Canal Bank v. Judson, 8 N. Y. 254;
Williams v. St. Louis, etc., R. Co., 8 Mo. App. 135;
Haywood v. Collins, 60 Ill. 328;
Haywood v. McCrary, 33 Ill. 459.

(*c*) **In Illinois Justices of the Peace have jurisdiction only in "their respective Counties."**

Starr v. Curtis Ann., Ill. Stat., Ch. 79, par. 16.

(*d*) **The judgment of the Illinois Court in the Second Garnishment Proceedings, as well as in the First, being void for want of jurisdiction, even though it had been prior to this judgment, would be no protection.**

2 Wade on Attach., Secs. 401 and 46;
1 Freeman on Judg., Sec. 120 and cases cited;
Mercier v. Chace, 9 Allen 242;
Houston v. Musgrove, 35 Tex. 594;
Ponder v. Mosely, 2 Fla. 207, 267;
Shriver v. Linn, 2 How. 43;
Noble v. Thompson Oil Co., 79 Pa. Stat. 354;
Borden v. Fitch, 15 Johns, 121;
Gage v. Hill, 43 Barb. 44;
Bissell v. Briggs, 9 Mass. 438;
Shumway v. Stillman, 4 Cowen, 392.

(*e*) **Flannigan stood in the shoes of Tourville and could not be placed in a better position than was Tourville himself.**

Weil v. Tyler, 38 Mo. 545;
Heege v. Fruin, 18 Mo. App. 141;
McPherson v. R. Co. 66 Mo. 103;
Funkhouser v. Eveland, 3 Mo. App. 602;
Myer v. Ins. Co., 40 Md. 596.

III.

(*a*) **"A garnishee must for his own protection see that jurisdiction of the defendant has been properly acquired by the Court."**

Tourville v. Wabash R. Co., 61 Mo. App. 532;
Drake on Attachments, Sec. 695;
McCloon v. Beattie, 46 Mo. 391;
Epstein v. Salorgne, 6 Mo. App. 352.

(*b*) And plead the defendant's exemptions.

Chicago, etc., R. Co. v. England, 84 Ill. 376;
Chicago, etc., R. Co. v. Mason, 11 Ill. App. 525.

(*c*) **Had the garnishee introduced the Illinois Statute in the Second Garnishment Proceedings instead of making default, judgment would not have gone against it.**

Laws Ill. 1891, p. 141, Sec. 3.

IV.

THE PENDENCY OF THIS SUIT AGAINST THE GARNISHEE WILL DEFEAT THE SUBSEQUENT GARNISHMENT PROCEEDING IN A COURT OF ANOTHER JURISDICTION.

Wallace v. McConnell, 13 Pet. 136;
Mack v. Winslow, 59 Fed. Rep. 319;
Burke v. Hance, 76 Tex. 76;
Wood v. Lake, 13 Wis. 94.

V.

A DEBT DUE ON A JUDGMENT IN ONE JURISDICTION CANNOT BE GARNISHEED IN ANOTHER JURISDICTION. The debt due Tourville on the judgment of the St. Louis Court of Appeals was not subject to garnishment in the courts of Illinois.

Mower v. Fletcher, 114 U. S. 127;
Henry v. Gold Co., 15 Fed. Rep. 649; S. C. 5 McCreary, 70;
Loomis v. Carrington, 18 Fed. Rep. 97;
Tourville v. Wabash, 148 Mo. 614;
Drake on Attachments (7th Ed.), Sec. 625;
Sewers v. Woodburn Co., 43 Mich. 275;
Young v. Young, 2 Hill (S. C.), 426;
Franklin v. Ward, 3 Mason, 136;
Coldfelter v. Cox, 1 Sneed (Tenn.), 336.

A judgment in one State is not the subject of garnishment in another State.

Reiner v. Hurlbut, 81 Wis. 32;
American Bank v. Snow, 9 R. I. 11;
Shinn v. Zimmerman, 3 Zab. 150;
Jones v. N. Y. & C. R. Co., 1 Grant. 457.

A judgment of Federal Court is not subject to Garnishment in State court.

Henry v. Gold P. Co., *supra;*
Burrell v. Letson, 2 Spiers, 378;
Thomas v. Woolbridge, 2 Wood, 667;
Perkins v. Guy, 2 Mont. 16.

VI.

Plaintiff in Error is not the same corporation as the Wabash R. Co., of Illinois, the garnishee. The consolidation of interests of the Missouri and Illinois Corporations of the same name does not change their distinctive character as separate corporations.

Nashau R. Co. v. Lowell R. Co., 136 U. S. 356;
Farnum v. Blackstone Canal Co., 1 Sumn, 46;
Muller v. Dows, 94 U. S. 444;
Racine R. Co. v. Farmers, 49 Ill. 331.

VII.

The payment of the judgment in the First Garnishment Proceedings would have been a complete defense to the Second Garnishment Proceedings before the same court.

ARGUMENT.

There can be no dispute about the proposition that the courts of Missouri are bound to give full faith and credit to the judicial proceedings of the courts of Illinois, or that the courts of Illinois are bound to give full faith and credit to the judicial proceedings of the courts of Missouri. In this case, the rule of law is conceded, the facts are agreed upon, but the application of the facts to the rule is seriously disputed. **Defendant in Error contends that the proceedings in this case and the judgment herein are prior to the Second Garnishment Proceedings in Illinois and the violation of the Constitution was by the Illinois Justice of the Peace.**

IN REPLY TO SUPPLEMENTAL BRIEF OF PLAINTIFF IN ERROR.

Plaintiff in Error has filed a Supplemental Brief, practically resting its case upon the authority of **Chicago, etc., R. Co. v. Strum, 174 U. S. 710.** But the essential facts in that case, upon which the opinion of the Court is based, are entirely lacking here. When

these facts are supplied, the Strum case becomes an authority for the opinion of the Supreme Court of Missouri in this case.

It is conceded that if the Second Garnishment Proceedings were begun prior to the commencement of this action, if the debt sought to be impounded were not a judgment debt of another jurisdiction, if the garnishee in those proceedings, the Wabash R. Co. (of Illinois), were the debtor; in other words, if the corporate individual which owed the debt had been duly summoned as garnishee, if Tourville had been notified in strict compliance with the Illinois Statutes, and if the debt sued on had no "special limitations or provisions in respect to payment," but were payable generally, the Strum case might be considered as an authority in support, in part, of what we conceive to be our opponent's position in this case. But none of these essential features are found in the Strum case, and the absence of any one of them destroys that case as an authority in support of appellant's position.

This suit was not only begun prior to the Second Garnishment (*ante* Point IV.), but judgment was had in Missouri prior to the beginning of said Garnishment proceedings, making the debt sought to be impounded "a judgment debt of another jurisdiction," (*ante* Point V.). In the Strum case the debt impounded was not a judgment debt, and the Garnishment proceedings "were commenced prior to the commencement of the present [that] action." In this case, the Wabash R. Co. of Missouri, the debtor, was not the corporate individual summoned as garnishee (*ante* Point VI.); in the Strum case, the Chicago, R. I. & P. R. Co., the debtor, and corporate individual summoned as garnishee, "was not a Kansas corporation consolidated in interest, etc., with an Iowa corporation," but "was an Iowa corporation and a resident of that State."

The record does not show that Tourville was notified in compliance with the Illinois Statute (**ante Point II.**) In the Strum case, the service upon Strum was "duly had by publication in accordance with the statute of Iowa." The debt sued on in this case was "payable in the City of St. Louis and not elsewhere." In the Strum case the debt was "payable generally and could have been sued on in Iowa" by Strum. In this case, the debt being payable only in the City of St. Louis, Tourville could not have maintained his action in the State of Illinois and Flannigan, at best, could only stand upon the rights of Tourville. (**Ante Point II,** *e.*)

In the Strum case, this Court said:

> "The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. **To do it, you must go to the domicile of his debtor,** and can only do it under the laws and procedure in force there. **This is a legal necessity,** and considerations of *situs* are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. **He, and he only, has something in his hands."** Upon the question of *situs* the opinion says, "all debts are payable everywhere, **unless there be some special limitation or provision** in respect to the payment" and particularly calls attention to the fact in that case that "the debt involved in the pending case had no special limitation or provision in respect to payment."

The views above expressed being the law, Flannigan's attachment could be maintained **only at the domicile of Tourville's Debtor,** The Missouri Corporation, **it only had something in its hands** belonging to Tourville. That something was wages earned in Missouri and by special limitations of contract payable at the City of St. Louis, Missouri, and not elsewhere. Why should fiction of law, as to the domicile of the Debtor garnishee, and constructive service as to the defend-

ant, be resorted to for the purpose of giving the Illinois Justice of the Peace jurisdiction, when it is but a five minute ride across the Eads Bridge to a court at the undisputed domicile of both the Debtor garnishee and defendant, where personal service could be had on both. To give the Illinois court jurisdiction in the Garnishment proceedings one of two fictions must be resorted to, either the Missouri Corporation must be fictitiously supposed to be in Illinois so that service of process could be had upon it over there, or the Illinois Corporation must be fictitiously supposed to be the individual that employed Tourville and owed him the debt. Fiction in foreign attachment laws should not be resorted to when by doing so the public acts of a sister State, as to exemptions, are violated.

In **Howland v. Ry., 134 Mo. 476,** which Plaintiff in Error says is almost exactly like this case in its facts, the Justice of the Peace in Iowa obtained jurisdiction in the garnishment case before suit was brought in Missouri and the attachment was not an attempt to impound, in Iowa, a Missouri Judgment debt. The Rock Island Ry. Co., garnishee in that case, was not a citizen of Missouri, but was of Iowa, where the attachment was instituted.

Practically the same distinctions as those pointed out in the above cases are found in all of the authorities cited by our opponents.

AS TO POINT I.

In the First Garnishment Proceedings in Illinois the Justice of the Peace did not acquire jurisdiction over the Defendant there, and Plaintiff here, under the laws of Illinois; the judgment was therefore void. This was decided, judicially by the St. Louis Court of Appeals, March 26, 1895 (Trans., p. 9). That decision was a final judgment. So whether or not the

St. Louis Court of Appeals gave full faith and credit to the judgment of the Illinois Justice of the Peace in the First Garnishment Proceedings is now *res adjudicata*. Said judgment directed the Circuit Court to enter a judgment which disposed of the case.

In **Smith v. Adams, 130 U. S. 167, loc. cit. 177,** this Court said, a judgment of reversal is final when it enters **"or directs the entry of a judgment which disposes of the case."**

And in **Winthrop v. Meeker, 119 U. S. 180,** in an opinion by Chief Justice Waite, the following language was used:

> "The litigation of the parties as to the merits of the case is terminated, and nothing now remains to be done but to carry what has been decreed into execution. **Such a decree has always been held to be final for the purposes of an appeal."**

In **Bostwick v. Brinkerhoff, 106 U. S. 53--55,** this Court said:

> "The rule is well settled and of long standing, that a judgment or decree, to be final, within the meaning of that term as used in the Acts of Congress giving this Court jurisdiction on appeals, and Writs of Error, must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it has already entered."

In **Dainese v. Blake, 119 U. S. 53, loc. cit. 55,** this Court in an opinion by Chief Justice Waite said:

> "The authorities are uniform to the effect that a decree to be final for the purposes of an appeal must leave the case in such a condition that if there is an affirmance here, the court below will have nothing to do but execute the decree it has already entered."

In **Young v. Thrasher, 123 Mo. 312,** the Supreme Court of Missouri expressed the same rule of law in the following language:

"This Court has the power, when sufficient *data* is before it, either to enter the proper judgment, or remand the case to the Court of original jurisdiction, with directions to that Court to make the proper entry. In either case the judgment is that of this Court, and is final and conclusive of all matters involved in the litigation. The inferior Court only carries into execution the judgment which has been rendered by this Court. **'Nothing is left to the judicial discretion of the Court below.'** Mower v. Fletcher, 114 U. S. 127; Black on Judgments, Sec. 34." "Rights of the parties, which may have accrued subsequent to the rendition of the original judgment, and which were not in issue in the proceeding in which it was rendered, would not be adjudicated therein, but the Circuit Court has no power to reverse, open or interfere with the judgment of this Court, in order to settle such rights. They must be determined by a subsequent suit upon a different cause of action."

Such is the effect of all the decisions cited **ante Point I.**

Therefore, the First Garnishment Proceedings in so far as they affect the rights of the parties to this suit are not under review here.

This disposes of the first three points in the Brief of Plaintiff in Error.

AS TO POINT II. CONCERNING JURISDICTION.

The Second Garnishment Proceedings were not entitled to full faith and credit in this case.

It is a well established principle of law in Illinois, Missouri, and throughout the United States, that constructive service confers no jurisdiction unless the requirements of the statute have been strictly complied with, and the Record in a particular case must show affirmatively that jurisdiction over a defendant on such service has been properly acquired. (*ante* Point II, *a.*) This is in accord with the provision of the Constitution that no person shall be de-

prived of his property without due process of law. In Illinois, as everywhere, Justices of the Peace have jurisdiction only in their respective counties (*ante* Point II, *c.*) Wyatt, the Justice of the Peace in the Garnishment Proceedings, then had jurisdiction only in his county, St. Clair County, Illinois. Nowhere does the Constable's Return show that the notices to defendant required by statute (S. & C. Ann., Ill. Stat., Chap. 11, p. 51) were posted in St. Clair County, Illinois. (See constable's return of Posting, Trans., p. 17.) There is a Workingmen's Bank and a Mr. Joyce's store in the City of St. Louis, Missouri, just across the river, and both are in what may be said to be in the neighborhood of the Justice's office, yet posting notices at these places, both outside of St. Clair County, Illinois, could not confer jurisdiction on a Justice in that county in that State.

In **Haywood v. McCreary,** 33 Ill. 459, the Supreme Court of Illinois said "in suits by attachment, where there is no personal service upon the defendant, in order to sustain the judgment, the record must show affirmatively that the prerequisites of the statute in regard to notice by publication was complied with." This language was quoted with approval in Haywood v. Collins, 60 Ill. 331, and a number of other more recent cases (See cases *ante* Point II, *a.*)

The record in the Second Garnishment Proceedings then, failing to show that defendant Tourville had been brought into Court by due process of a law, the presumption is conclusive that the judgment is void (cases Point II., *b*) and a rejection of that record in this case is not a failure to give full faith and credit to the judgment in those proceedings.

AS TO POINT III.

(*a b*) The Missouri corporation contracted with Defendant in Error to perform certain services, in

the City of St. Louis, Missouri, and agreed to pay his wages in said City, and nowhere else. (Trans., p. 5.) He being the head of a family these wages, under the Missouri Statute, were guaranteed to him for the support of his wife and children. (Trans., p. 4.) Even under the Illinois Statute the family could not be deprived of his earnings by the courts of Illinois. (*Ante* Point III, *c.*) Under the circumstances of this case we are at a loss to understand why the acts of an irresponsible, and it may be, corrupt, Justice of the Peace have been so quietly submitted to, and such persistence shown in trying to defeat the just claim of a former employee. Tourville, practically a pauper, could not go to Illinois to defend the proceedings over there. He was advised that the law was, "a garnishee must, for his own protection, see that jurisdiction of the defendant had been properly acquired by the Court." (*Ante* Point III, *a.*) He was advised that in Illinois the garnishee was bound to show his exemptions or it would be precluded from claiming the proceedings in defense of this suit. (*Ante* Point III, *b*, another distinction from the Strum case, *ante.*) It was unfortunate that the Illinois corporation should have been sued, in garnishment, by Flannigan. But that corporation did not owe Tourville anything (Point VI.) and no obligation, legal or moral, rested upon him to defend that suit. What if he was indebted to Flannigan, there was no obligation on him to submit to the jurisdiction of that court until he had been properly brought into court in compliance with the statute. "The question in these cases is not whether the defendant knew that an action was pending against him, but whether notice of that fact was brought home to him in the manner provided by statute. The law deals with notice and not with knowledge," and "jurisdiction cannot be conferred by estoppel."

(Tourville v. Wabash, 61 Mo. App. 533; Trans., p. 9.)

(*c*) At the time of the institution of the Second Garnishment Proceedings, the following statute was in force in Illinois:

> "Whenever, in any proceedings in any court of this State to subject the wages due to any person to garnishment, it shall appear that such person is a non-resident of the State of Illinois; that the wages earned by him were earned and payable outside of the State of Illinois; the said person whose wages are so sought to be subjected to garnishment shall be allowed the same exemptions as is at the time allowed to him by the law of the State in which he so resides."
>
> Laws Ill. 1891, p. 141; went into force July 1, 1891;
> 2 Starr & C. Ann. Ill. Stat., Ch. 52, Sec. 22;
> Wabash v. Dongan, 142 Ill. 257.

Had the garnishee, as was its duty (*Ante*, Point III, *b.*) pleaded Tourville's exemptions, the Second Judgment under the above statute could not have been obtained.

AS TO POINT IV.

To entitle the judgment in the Second Garnishment Proceedings to the full faith and credit guaranteed under the Constitution to the judicial proceedings of the State of Illinois, those proceedings must have been instituted before the proceedings in this case were instituted. Otherwise it was the duty of the Illinois court to give full faith and credit to these proceedings in the Missouri Court.

This suit was instituted June 10, 1891. (Trans., pp. 4, 5.)

Second Garnishment Proceedings, instituted April 1, 1895. (Trans., p. 10.)

It has been the settled law in this country, since the early case of Wallace v. McConnell, before this Court in 1839, that the pendency of another suit by defendant against the garnishee in a court of another

jurisdiction will defeat the garnishment proceedings. In that case this Court used the following language which has been quoted with approval and followed by the State and Federal courts ever since, to-wit:

> "The jurisdiction of the District Court of the United States and the right of the plaintiff to prosecute his suit in that Court having attached the right, could not be arrested or taken away by any proceedings in another Court. **This would produce a collision in the jurisdiction of Courts that would extremely embarrass the administration of justice.** If the attachment had been conducted to a conclusion and the money recovered of the defendant before the commencement of the present suit, there can be no doubt that it might have been set up as a payment."
>
> Wallace v. McConnell, 13 Pet. 136. Followed in Mack v. Winslow, 59 Fed. Rep. 319; Remer v. Hurlbut, 81 Wis. 32; Burke v. Hance, 76 Tex. 81.

In Mack v. Winslow, *supra*, the rule is concisely stated thus:

> "The prior pendency of a suit involving the same subject matter is the test of priority of jurisdiction."

AS TO POINT V.

(*a.*) Not only did the jurisdiction of the Missouri Court attach five years before the Garnishment Proceedings were begun in the Illinois Court, but the judgment in this case was prior to the institution of the Second Garnishment Proceedings, and **a debt due on a judgment in one jurisdiction is not subject to garnishment in another.**

Judgment St. Louis Court of Appeals, March 26, 1895. (Trans., p. 9.)

Second Garnishment Proceedings instituted, April 1, 1895. (Trans., p. 10.)

Judgment formerly entered by the Circuit Court as directed by the judgment of the St. Louis Court of Appeals, May 3, 1895. (Trans., p. 12.)

Plaintiff in Error contends that the Second Garnishment Proceeding were prior to the judgment in this case, and, therefore, entitled to full faith and credit in the Missouri Court, upon the theory, that the judgment of the St. Louis Court of Appeals reversing the judgment of Judge Withrow, left the parties "to proceed in the court below to obtain final determination of their rights." (Brief, p. 19.) If the Plaintiff in Error is wrong in this view of the law, then the cases cited under Point and Argument V. of its Brief become authorities in support of Defendant in Error's position.

The error in the position taken by Plaintiff in Error is, that it does not give credence to the universally recognized distinction between a judgment of simple reversal and one of reversal **with directions.** In the former case the parties "may proceed in the Court below to obtain a final determination of their rights," in the latter their rights have been already finally determined.

In Mower v. Fletcher, 114 U. S. 127, the State Appellate Court had rendered judgment, that the judgment of the lower Court

> "Be, and the same is hereby, reversed with costs, **with directions** to the Superior Court of Los Angeles County, to enter judgment upon the findings for the Plaintiff, as prayed for in his complaint."

In regard to that judgment, which is in all respects similar to that of the St. Louis Court of Appeals in this case; this Court said:

> "The litigation is ended, and the rights of the parties on their merits have been fully determined. Nothing remains to be done but to require the inferior Court to perform the ministerial act of entering the judgment of that Court, which has been ordered. This is but carrying the judgment of the Supreme Court, which has been rendered, into execution. Nothing is left to the discretion of the Court below."

The Supreme Court of Missouri, following the views above expressed by this Court, held the judgment of the St. Louis Court of Appeals to be a final judgment which could not be set aside by the Circuit Court (*ante* Point I, *b*) or opened up and defeated by a subsequent proceeding in another jurisdiction. (Trans., p. 28.)

As we have already pointed out, if Plaintiff in Error was aggrieved by that judgment its remedy was by appeal to this court on the constitutional ground that the St. Louis Court of Appeals had not given full faith and credit to the judgment of the Illinois Court in the First Garnishment Proceedings.

(*b*) The Second Garnishment Proceedings, then, are an attempt to impound, in Illinois, a debt due on a judgment in Missouri. This can not be done for the very cogent reasons given by the Supreme Court of Missouri, in its opinion in this case (Trans., p. 28) and upon the authority of the decisions of this court there cited.

In addition thereto we quote the language of Federal Circuit Judge McCrary, to-wit:

> "Whatever the rule may be with respect to the garnishment of a judgment debtor in the same Court in which the judgment was rendered, I am of the opinion that it would lead to a great inconvenience and to serious conflict of jurisdiction to hold that a judgment in one Court may be attached by garnishment in an other, **especially where the two Courts are of different jurisdictions.** The decided weight of authority sustains this view."
>
> Henry v. Gold Park Mining Co., 15 Fed. Rep. 649;
>
> Citing cases *ante* Point V, *a*, *b*, *c*.

AS TO POINT VI.

The Wabash R. Co., of Missouri, and the Wabash R. Co., of Illinois, are two legal entities, one a cor-

poration and citizen of Missouri, the other a corporation and citizen of Illinois. With the latter plaintiff had no dealings and it was not indebted to him in any way. The debt due him by the former could not be impounded by service of garnishment process upon the latter. Nashau R. Co., v. Lowell R. Co., 136 U. S. 356, followed, in Tourville v. Wabash, 148 Mo. 614.

> In **Nashau R. Co. v. Lowell R. Co.,** *supra*, this Court said: "Railroad corporations created by two or more States, though joined in their interests, in the operation of their roads, in the issue of their stock, and in the division of their profits, so as practically to be a single corporation, do not lose their identity, but **each has its existence and its standing in the courts of the country only by virtue of the legislation by which it is created, and the union of name, of officers, of business and of property, does not change their distinctive character as separate corporations."**

In **Muller v. Dows, 94 U. S. 444-55,** with reference to the consolidation of the Chicago & S. W. R. Co., by the laws of Missouri and Iowa, under like statutes in those states by which the two roads, of the same name, were authorized to "merge and consolidate the stock of the respective companies, making one joint stock company of the railroads thus connected," in an opinion by Mr. Justice Strong this Court said:

> "The two Companies become one. **But in the State of Iowa that one was an Iowa Corporation existing under the laws of that State, ALONE.** The laws of Missouri had no operation in Iowa."

The Wabash R. Co., then, in the State of Illinois is the Illinois corporation and notice of garnishment served upon its agent in East St. Louis does not impound a debt of the Missouri corporation, payable only in the City of St. Louis, Missouri.

VII.

It is an admitted fact that Plaintiff in Error never owed Tourville any debt other than the $81.00 sought to be impounded by the Second Garnishment Proceedings, and that said debt is the same debt that was impounded in the First Garnishment Proceedings and paid by the Wabash R. Co., of Illinois, upon an execution on the judgment in those proceedings. (Trans., p. 12). It does not require the citation of authorities to establish the fact that, had the Plaintiff in Error pleaded and proved the payment of the judgment in the First Garnishment Proceedings, a second judgment for the same debt, in the same court, between the same parties, could not have been obtained. The further fact that over five years have elapsed since the judgment in the Second Garnishment Proceedings was obtained, and that said judgment has not been satisfied, when the Wabash R. Co., of Illinois, is known to be solvent, would tend to indicate that the Second Garnishment Proceedings are a mere sham, devised for the purpose of defeating, if possible, the judgment directed by the St. Louis Court of Appeals in this case.

It follows, therefore, that the Justice of the Peace in Illinois was wholly without jurisdiction in the Second Garnishment Proceedings, and the Missouri Courts properly disregarded that proceeding, because:

(1) The proceedings in this case are prior to the Second Garnishment Proceedings in Illinois.

(2) The debt sought to be impounded, being a judgment debt in Missouri, cannot be attached by a foreign jurisdiction.

(3) The judgment of the St. Louis Court of Appeals as to the debt is *res adjudicata.*

(4) The corporate individual owing the debt was not summoned as garnishee.

(5) The Record does not show compliance with the local statutes in the posting of notice to the creditor.

And for the further reasons:

The Circuit Court had no power to consider or determine any rights of defendant which accrued pending the appeal, or to do anything not included in the duty of entering the judgment as directed.

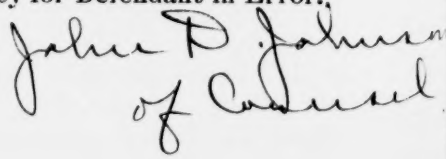
Under the Laws of Illinois, the garnishee was bound to defend. Had it done so in this case, judgment could not have been obtained against it for the same debt it had paid under execution in the same Court under a former judgment.

Had it done so in this, judgment could not have been obtained, because under the Illinois statute the debt was exempt.

Respectfully submitted,

VIRGIL RULE,

Attorney for Defendant in Error.



Supreme Court of the United States.

No. 36.—October Term, 1900.

The Wabash Railroad Company, Plaintiff in Error, *vs.* Peter Tourville. } In error to the Supreme Court of the State of Missouri.

[December 3, 1900.]

Mr. Justice McKenna delivered the opinion of the Court.

The plaintiff in error is a consolidated railway corporation, separately organized under the laws of Illinois and Missouri. It was indebted to the defendant in error, whom we shall designate by his name, Tourville, for work and labor performed in St. Louis, Missouri, in the sum of $81.98. Tourville was indebted on a promissory note for $132 to one Flannigan, who lived in East St. Louis, State of Illinois.

On the 10th of June, 1891, Tourville commenced an action before a justice of the peace of the city of St. Louis, against the plaintiff in error for his wages, and obtained a judgment by default for the sum of $75 on the 22d of June, 1891. From this judgment the plaintiff in error appealed to the Circuit Court of the city of St. Louis.

Prior to the suit by Tourville against plaintiff in error, to wit, on the 3d of June, 1891, Flannigan commenced suit against him before a justice of the peace of East St. Louis, Illinois, and caused the plaintiff in error to be summoned as garnishee. Tourville was not personally served, but plaintiff in error orally notified him and his attorney in time for him to make defense to the suit. He did not appear, and judgment was entered against him by default on July 13, 1891, for $132.

The plaintiff in error appeared in the action brought by Flannigan, and admitted indebtedness to Tourville in the sum of $71.83, and pleaded and claimed for him the exemption allowed by the laws of Illinois and Missouri; and also pleaded and proved that Tourville had recovered a judgment against plaintiff in error for his wages in the courts of Missouri, and that such wages were earned in Missouri under a contract made there, and were payable in the city of St. Louis, "and nowhere else," and were exempt from attachment by laws of that State, because Tourville was the head of a family, residing with the same in the State, and had no property except his wearing apparel.

The Illinois exemption was allowed, which amounted to $50, but the Missouri exemption was disallowed, and judgment was rendered against

plaintiff in error on the 25th of July, 1891, for the sum of $21.83. The company appealed to the City Court of East St. Louis.

On the 21st of December, 1891, the case came on for trial in the City Court of East St. Louis. Tourville did not appear. The plaintiff in error appeared and demanded a jury. The attachment was sustained, and a verdict found against Tourville for the sum of $132, and against the company as garnishee in favor of Tourville for the use of Flannigan for $21.83 and costs—amounting in all to $43.38. Execution was issued, and the company paid the judgment against it as garnishee.

On the trial of the action of Tourville against the company in the Circuit Court of St. Louis the facts stated above were stipulated, and the case submitted to the circuit judge, sitting as a jury, and judgment was rendered in favor of Tourville as follows :

Whole amount of wages	$81 98
Less judgment and costs paid by defendant in East St. Louis	43 38
Judgment against defendant	$38 60

The plaintiff Tourville took an appeal to the St. Louis Court of Appeals which reversed the judgment, holding that the proceedings in garnishment, were void, on the ground that the justice's court of East St. Louis had no jurisdiction, because there was no personal service on Tourville, and the directions of the statute for substituted service had not been observed, and because plaintiff in error had failed to make this defense, although it appeared by the papers on file in the justice's office.

The opinion concluded as follows : "It results from the foregoing that the court erred in holding that the defendant company was entitled to credit for the amount paid by it in the garnishment proceedings. The judgment is reversed and the cause remanded, with directions to the trial court to enter judgment for plaintiff for eighty-one dollars, the amount sued for and admittedly due if we disregard the garnishment proceedings." (61 Mo. App. 527.)

The mandate was issued, and the court ordered "to enter judgment for plaintiff for eighty-one dollars, the amount sued for."

On the 21st of April, 1895, and before the mandate reached the Circuit Court, Flannigan instituted another suit by attachment against Tourville before a justice of the peace in East St. Louis, and the defendant in error was again summoned in garnishment.

On the return of the mandate to the Missouri Court of Appeals of the Circuit Court of St. Louis the proceedings in said suit and garnishment were offered in evidence, but ruled out, and the company excepted.

Judgment was then entered in favor of Tourville for $81 in pursuance of the mandate. The company again excepted, and moved to set the judgment aside, and for a new trial, on the ground that by entering said judg-

ment and rejecting said evidence the court refused to give full faith and credit to proceedings against the defendant in a sister State, in violation of section 1, article 4, of the Constitution of the United States. The motion was overruled, and the defendant excepted. Subsequently a motion was made to modify the judgment, and in support thereof the proceedings in garnishment were again offered, and again ruled out. Execution was issued on the judgment.

On the 12th of October, 1895, a motion was made to quash the execution, based on the same grounds as former motions, which was also denied. The company then appealed to the Supreme Court of the State. That court sustained the rulings of the lower court and affirmed its judgment. (148 Mo. 614.)

The Supreme Court said:

"The Circuit Court committed no error in rejecting the evidence of the proceedings in the second attachment suit in Illinois in rendering judgment for the plaintiff or in refusing to modify that judgment. It is true if the judgment of the Circuit Court had been simply reversed and the cause remanded the case would have stood as though no judgment had ever been rendered, and the parties would have been entitled 'to proceed in the court below to obtain a final determination of their rights in the same manner and to the same extent as if the cause had never been decided by any court.' (*Crispen* v. *Hannoran*, 86 Mo. *loc. cit.*) But such was not the case. The cause was remanded to the Circuit Court with directions 'to enter judgment for the plaintiff for $81,' and the Circuit Court had no judicial discretion in the matter. It had no power to enter any other judgment or to consider or determine other matters not included in the duty of entering the judgment as directed. (*State ex rel.* v. *Edwards*, 144 Mo. 467; *Rees* v. *McDaniel*, 131 Mo. 681; *Young* v. *Thrasher*, 123 Mo. 308; *Stump* v. *Hornback*, 109 Mo. 272; *Chouteau* v. *Allen*, 74 Mo. 56.)

"3. The court committed no error in issuing execution on the judgment nor in overruling defendant's motion to quash the same. The judgment of the St. Louis Court of Appeals rendered on the 26th of March, 1895, was a final judgment in the cause. (*Young* v. *Thrasher*, 123 Mo. 308; 1 Black on Judgments, sec. 34, p. 36, and cases, note 64; *Mower* v. *Fletcher*, 114 U. S. 127; *Smith* v. *Adams*, 130 U. S. 167.)

"The entry of that judgment in the Circuit Court was a purely ministerial act, carrying into execution the judgment of the appellate court of the date and effect as rendered by that court. One of the effects of that judgment was to merge the cause of action, the debt sued for, in the judgment. 'It was drowned in the judgment.' It thereby 'lost its vitality,' and 'all its power to sustain rights and enforce liabilities terminated in the judgment.' (*Cooksey* v. *Kansas City &c. R. R. Co.*, 74 Mo. 477; 1 Freeman on Judgments, § 215; 2 Black on Judgments, § 674.) On the 26th of March, 1895, the old debt of the company to the plaintiff ceased to exist, and thereafter could not sustain any liability imposed thereon by the subsequent garnishment proceedings under the second attachment suit in Illinois. (15 Am. & Eng. Encycl. p. 341.)"

To the judgment of the Supreme Court this writ of error was sued out.

It is contended that full faith and credit were not given to the proceedings in garnishment, and in support of it counsel has ably and fully discussed the law and effect of garnishment. We do not think it necessary to enter into that discussion as fully as counsel have. The judgment of the Court of Appeals was undoubtedly final. It completed the litigation, and left nothing to the lower court but to enter judgment for Tourville for $81. The lower court had no option or jurisdiction to do anything else. The rule precludes in that State the adjudication of rights occurring subsequently to the rendition of the original judgment. (*Young* v. *Thrasher*, 123 Mo. 308.)

This disposes of the various motions of defendant in error preceding the entry of the judgment on the mandate, and the motions to set aside the same and to grant a new trial. Is the motion to quash the execution entitled to different consideration? It is not clear from the opinion of the Supreme Court whether the lower court under the local procedure had as little power over the execution on the judgment as it had over the judgment entered on the mandate of the Court of Appeals. The Supreme Court, however, did hold that the judgment was foreign to Illinois, and therefore not subject to garnishment there. In this the court is sustained by the weight of authority. (Drake on Attachments, sec. 625, and cases compiled in 14 Am. & Eng. Enc. of Law, 775, 776.)

This court has held that to the validity of a plea of attachment the attachment must have preceded the commencement of the suit in which the plea is made. (*Wallace* v. *McConnel*, 13 Pet. 136.)

Judgment affirmed.

Mr. Justice BREWER dissented.

True copy.

Test:

Clerk Supreme Court, U. S.